

**CHIEF JUSTICES OF THE SUPREME COURT
OF THE STATE OF CALIFORNIA**

1. Serranus C. Hastings, December 22, 1849 - January 1, 1852
2. Henry A. Lyons, January 1, 1852 - March 1, 1852
3. Hugh C. Murray, March 31, 1852 - September 18, 1857
4. David S. Terry, September 18, 1857 - September 12, 1859
5. Stephen J. Field, September 12, 1859 - May 20, 1863
6. W. W. Cope, May 20, 1863 - January 1, 1864
7. Silas W. Sanderson, January 1, 1864 - January 1, 1866
8. John Currey, January 1, 1866 - January 5, 1868
9. Lorenzo Sawyer, January 1, 1868 - January 1, 1870
10. Augustus L. Rhodes, January 1, 1870 - January 1, 1872
11. Royal T. Sprague, January 1, 1872 - February 24, 1872
12. William T. Wallace, February 27, 1872 - January 1, 1880
13. Robert F. Morrison, January 5, 1880 - March 2, 1887
14. Niles Searls, April 19, 1887 - November 6, 1888
15. William H. Beatty, January 2, 1889 - August 4, 1914
16. Matthew I. Sullivan, August 22, 1914 - January 4, 1915
17. F. M. Angellotti, January, 1915 - November 14, 1921
18. Lucien Shaw, November 14, 1921 - January 13, 1923
19. Curtis D. Wilbur, January 13, 1923 - March 19, 1924
20. Louis W. Myers, April 8, 1924 - December 31, 1925
21. William H. Waste, January 1, 1926 - June 6, 1940
22. Phil S. Gibson, June 10, 1940 - August 31, 1964
23. Roger J. Traynor, September 1, 1964 - January 31, 1970
24. Donald R. Wright, May 1, 1970 -

HISTORY OF THE Supreme Court

VOLUME I

Justices **OF CALIFORNIA**
1850
1900

by

J. EDWARD JOHNSON
of the California Bar

Under the Auspices of the State Bar Committee on
the History of Law in California

JUDGE A. FRANK BRAY, *Chairman*
EUGENE M. PRINCE
KENNETH M. JOHNSON
LAWRENCE A. HARPER

BENDER-MOSS COMPANY
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PUBLISHER'S FOREWORD

RARELY DOES A LAW PUBLISHER have the opportunity in one publishing venture both to act in a service capacity to the profession and to bring to it a work of sound literary merit and interest.

Just such an opportunity presented itself to the Bender-Moss Company when it learned that the Honorable A. Frank Bray's Committee on the History of Law in California had prepared to the point of publication a "History of the Supreme Court Justices of California."

A reading of the manuscript for Volume One of the "History" made it clearly apparent to the publisher that this work was an important literary contribution by the Committee and its principal researcher and writer, J. Edward Johnson. It is not a work of fleeting or temporary importance, but one that will endure for generations as an honest appraisal of a group of men who exerted major influence on the development of California jurisprudence.

Rather than produce this volume in the format of the standard law book, we believed the contents and purpose worthy of specially styled format, and quality typography and printing. It is hoped that the book's appearance as well as content will make it a prized addition to every lawyer's bookshelf, and an attractive item for the lawyer to place on his reception room table.

Volume Two, which will cover the Justices presiding from 1900 to 1950, is scheduled for production one year from publication of Volume One.

The Publisher

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THE CALIFORNIA JUSTICES

JUSTICES OF THE SUPREME COURT OF CALIFORNIA • 1849-1963

	C.J.			C.J.
1 S. Clinton Hastings	1st	40 John J. DeHaven	} <i>Chronology arbitrary</i>	
2 Henry A. Lyons	2nd	41 Charles H. Garoutte		
3 Nathaniel Bennett		42 Ralph C. Harrison		
4 Hugh C. Murray	3rd	43 William F. Fitzgerald		
5 Solomon Heydenfeldt		44 William C. Van Fleet		
6 Alexander Anderson		45 Frederick W. Henshaw		
7 Alexander Wells		46 Walter Van Dyke		
8 Charles H. Bryan		47 Frank M. Angellotti	} <i>Chronology arbitrary</i>	17th
9 David S. Terry	4th	48 Lucien Shaw		18th
10 Peter H. Burnett		49 William G. Lorigan		
11 Stephen J. Field	5th	50 M. C. Sloss		
12 Joseph G. Baldwin		51 Henry A. Melvin		
13 Walter W. Cope	6th	52 Matt. I. Sullivan		16th
14 Edward Norton		53 William P. Lawlor		
15 Edwin B. Crocker		54 Curtis D. Wilbur		19th
		55 Thomas J. Lennon		
(<i>New Five Man Court</i>)		56 Warren Olney, Jr.		
16 Silas W. Sanderson	7th	57 William A. Sloane		
17 John Currey	8th	58 Charles A. Shurtleff		
18 Lorenzo Sawyer	9th	59 William H. Waste		21st
19 Augustus L. Rhodes	10th	60 Terry W. Ward		
20 Oscar L. Shafter		61 Frank H. Kerrigan	} <i>Chronology arbitrary</i>	
21 Royal T. Sprague	11th	62 Emmet Seawell		
22 Joseph B. Crockett		63 Louis W. Myers		20th
23 William T. Wallace	12th	64 John E. Richards		
24 Jackson Temple, 1870-72, 1886-89, 1895-1902		65 John W. Shenk		
25 Addison C. Niles		66 Jesse W. Curtis		
26 Isaac S. Belcher		67 Frank G. Finlayson		
27 E. W. McKinstry		68 Jeremiah F. Sullivan		
		69 John W. Preston	} <i>Chronology arbitrary</i>	
(<i>New Seven Man Court under Constitution of 1879</i>)		70 William H. Langdon		
28 Robert F. Morrison	13th	71 Ira F. Thompson		
29 Erskine M. Ross		72 Nathaniel P. Conrey		
30 John R. Sharpstein		73 Douglas L. Edmonds		
31 Samuel Bell McKee		74 Frederick W. Houser		
32 Milton H. Myrick		75 Jesse W. Carter		
33 James D. Thornton		76 Phil S. Gibson		22nd
E. W. McKinstry		77 Roger J. Traynor		
34 A. Van R. Paterson		78 B. Rey Schauer		
35 Thomas B. McFarland		79 Homer R. Spence		
36 Niles Searls	14th	80 Marshall McComb		
37 John D. Works		81 Raymond E. Peters		
38 William H. Beatty	15th	82 Thomas P. White		
39 Charles N. Fox		83 Maurice T. Dooling		
		84 Mathew O. Tobriner		
		85 Paul Peek		

THE CALIFORNIA JUSTICES

THE COMPOSITION AND JURISDICTION OF THE SUPREME COURT OF CALIFORNIA

Introduction by EUGENE M. PRINCE

THE SUPREME COURT OF CALIFORNIA was created by the Constitution of 1849. That instrument set up a judicial system on American models with the English common law as the basic rule of decision. Little was taken from Spanish or Mexican sources, though some civil law doctrines, including community property, were later introduced by legislation.

The Supreme Court at first consisted of three justices. Jurisdiction extended to appeals from all California courts in all but the most insignificant cases. Procedure was informal; briefs could be in longhand.

To meet a rising workload, as the state grew, the number of justices was increased to five in 1862. The present number of seven was fixed by the Constitution of 1879. In 1885 the Legislature required the Court to appoint three commissioners to assist it. Their number was increased to five in 1889. The commissioners sat in panels of three, heard cases and wrote opinions which became rulings of the Court upon its approval thereof.

In 1904 the Constitution was amended to abolish the commissioners and to set up three district courts of appeal, each consisting of three judges. The districts centered around San Francisco, Los Angeles, and Sacramento. A fourth district, which included territory from Fresno to San Diego, was later added. The first district (San Francisco) was provided with two divisions, and the second district (Los Angeles) with three. The 1961 Legislature created a new fifth district centered in Fresno, and added another division to San Francisco and to Los Angeles.

The 1904 amendments divided initial appellate jurisdiction between the Supreme Court and the district courts of appeal. Direct appeal to the Supreme Court was authorized in equity cases, law cases involving title to real estate, cases involving legality of taxes, certain probate matters, and criminal cases involving the death penalty. Only the Supreme Court is empowered to review orders of the Public Utilities Commission, formerly called the Railroad Commission.

The appellate system works in practice, however, quite differently than the above provisions might at first suggest. Beginning about 1941 the Supreme Court adopted the practice of referring virtually all its cases to the district courts of appeal except death sentence cases and cases involving orders of the Public Utilities Commission, over which the district courts of appeal have no jurisdiction. Two other classes of cases it has been the usual practice of the Supreme Court to keep have been habeas corpus proceedings and cases involving questions obviously of state-wide importance.

Hence in practical fact today all appeals, with the few exceptions noted, are first decided by a district court of appeal, subject to the discretionary power of the Supreme Court to grant a hearing before itself. Such hearings are granted only when necessary to secure uniformity of decision or the settlement of important questions of law, where the district court of appeal was without jurisdiction, or where its decision lacks concurrence of the required majority of qualified judges.

Another change in procedure which was effected by the practice of the Supreme Court itself was the abolition of departmental decisions. The Constitution of 1879 provided that the Supreme Court should have two departments of three justices each. The departments have power to render final judgments subject to the power of the Court to take cases over for hearing in bank. For many years following 1879 a great part of the Court's business was done by the departments. In the late 1920's, however, the Court simply stopped sitting in department and for upwards of thirty years has been hearing all cases in bank.

Originally justices of the Supreme Court were elected at partisan elections like other political candidates. The term of office provided in the Constitution of 1849 was six years; this was lengthened to ten years in 1862 and to the present term of twelve years by the Constitution of 1879. In 1934 the system for selecting justices of the Supreme Court and district courts of appeal was radically changed. A justice of these courts is now permitted at the end of his term to run unopposed on a yes or no ballot. Since no justice has ever been rejected by the voters under this system the practical situation is equivalent to life tenure, subject only to impeachment, recall, or removal for conviction of crime. When a vacancy

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occurs it is filled by the Governor, whose appointment must be approved by a qualifications commission consisting of the Chief Justice, the senior presiding justice of the district courts of appeal, and the Attorney General.

It is in the above setting that the justices have functioned whose biographies appear in this book.

Eugene M. Prince

Finally, a word as to origin of this book. For some time the State Bar has had a committee on the history of law in California. At the present time the committee consists of Judge A. F. Bray, Chairman, Eugene M. Prince, Kenneth M. Johnson, and Lawrence A. Harper. The latter, in addition to being a member of the bar, is a Professor of History at the University of California. The committee originally considered the preparation of a formal history of law in California; however, as study developed, three matters became apparent. The first was that personalities were as important as principles and more interesting. Next it became clear that the most prominent personalities were the justices of the Supreme Court. Lastly, the committee felt that a real purpose would be served by collecting and making readily available the studies by Mr. J. Edward Johnson of the justices that had appeared over a period of years in the *State Bar Journal*. Most of the sketches herein are reproductions, sometimes with minor modifications, of Mr. Johnson's original studies, and thus this book is truly J. Edward Johnson's. Both the State Bar and the public are deeply indebted to Mr. Johnson who has not only volunteered his materials, but his time on a large scale.

This volume covers the first fifty years of the Court and it is anticipated that there will be a second volume covering the next fifty years.

THE JUSTICES — AN OVER-ALL SKETCH

THE OPINIONS of a state's Supreme Court are read with closer perennial care than almost any other form of literature; not by a wide public, but by lawyers, judges, and by students of sociology, history, and government.

The reports of the Supreme Court of California in the year 1963 comprise 278 volumes. They are important because they express the meaning and applica-

tion of the legal rules under which a people live. Their importance naturally inspires interest in the men who produced them; not only their judicial work, but also their personal lives and characters. This interest may be greater in unusually gifted judges, but it is by no means limited to them.

The present junior associate justice of the Supreme Court of California (Paul Peek) was appointed in 1962, 113 years after the Court was created. He is its eighty-fifth member. In addition to the eighty-five justices, there were commissioners who assisted the Court from 1885 to 1905¹ and an occasional justice pro tem.

Until Homer Spence became a member of the Court in 1945, New York was the birthplace of more justices than any other state; California, now first, came second.² The Court had existed forty-one years before the first California-born man, Charles H. Garoutte, became a member. San Francisco County has furnished more justices than any other, with Los Angeles County leading in later years.³ Many states have contributed to the Court's membership.⁴ Three of the justices were born abroad, McKee in Ireland, Lorigan and Finlayson in Australia. Twenty-two have been Chief Justices.⁵

The great majority of the justices were country-bred and came from homes of modest means. A few, among whom were Hastings, Crocker, and Sloss, accumulated handsome fortunes. At least ten were sons of lawyers and three of ministers of the gospel.⁶ Several were sons of small manufacturers and businessmen, three of doctors,^{6a} and at least one of a professional teacher.^{6b} Fifteen or twenty used teaching as a stepping stone to the law,⁷ but most became lawyers without first engaging in another calling. Once in the law nearly all continued with it, although some mixed in other pursuits such as reporting, journalism and printing, agriculture, mining, and the like.⁸ The varied antecedents of the justices emphasizes that America has been and is a land of opportunity for men of energy and enterprise regardless of background.

Taken in the aggregate the men of the Court represent most of the human virtues and graces, and, of course, some human faults and limitations. Baldwin, with more than usual literary gifts, was recognized as one of America's keenest wits. Niles, McFarland, and Richards were excellent writers. Works was a prolific

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legal author of high rank both in and outside his court opinions. Many justices have had deep religious convictions and rendered substantial service to their churches, as well as to the state and nation.⁹ These have included Jews, Catholics, Episcopalians, Congregationalists, Methodists, Presbyterians, Baptists, Unitarians, and Christian Scientists,¹⁰ without exhausting faiths represented. Physically they have ranged from men of small stature to veritable giants.¹¹ Fraternally they have included Masons, Elks, Native Sons, Eagles, Foresters, Redmen, and other orders. Some of them have eschewed all fraternal connections.¹²

A good number of the justices, particularly in the earlier years of the Court, won spurs in politics as well as in the law.¹³ Their political faiths have varied widely.¹⁴ Several supported the Know Nothing movement in the middle 1850's. Some predicted dire calamity if reforms advocated in 1878 and 1879 should go into the proposed new Constitution, while others heartily supported them.¹⁵

Thirty-six of the justices originally came to the Court by direct election of the people, forty-six by appointment of the Governor, and three by election of the Legislature.¹⁶ There have been twenty resignations from the Court during its existence to date.¹⁷ Field resigned to become a justice of the Supreme Court of the United States; Wilbur to take a place in the President's cabinet; McKinstry to become dean of a law school; Kerrigan to become United States District Judge; Lyons to enter private business. After retiring Edmonds resumed practice and served for a number of years as the United States representative to the International Law Commission of the United Nations.¹⁸ Illness forced the retirement of Shafter and Temple. Of late years, pursuant to recent legislation, a number have retired after a length of service entitling them to pay after leaving the Court.¹⁹ Twenty have died in office.²⁰

Many of the justices served in state Legislatures, most in California but a few in other states.²¹ Wallace served in the Legislature after leaving the Court. Anderson and Works served as United States Senators and Hastings and DeHaven as Congressmen. Hastings, Heydenfeldt, Garoutte, Wallace, and Preston were unsuccessful in their senatorial aspirations. Burnett was California's first Governor, and three of the justices, Hastings, Wallace, and Fitzgerald, served as Attorney General.

Some fifty-five justices had judicial experience before coming to the Court; twenty-nine or thirty did not.²² Judicial experience is undoubtedly one proper factor for consideration in selecting a justice of the Supreme Court, but it may be noted that some of the Court's most highly regarded members have come directly from the bar. Three of the justices, Rhodes, Wallace, and Fitzgerald, served in the superior court after leaving the Supreme Court.

Anderson was a soldier in the War of 1812; Terry participated in the Texas War for Independence; Murray, Terry, Wallace, and Morrison fought in the Mexican War. In the Civil War, Works fought on the Northern side and Terry, Fitzgerald, and Ross in the Confederate Armies. Shenk served in the Spanish American War and Gibson, Spence, and McComb in World War I. With the more or less universal military training inaugurated with World War I, Traynor did a stint in the Army. Schauer has for a number of years retained his affiliation with the Navy.

Most of the justices the first hundred years were college men, although a number, on the example of Sir Edward Coke, did not remain to take a degree, and in some cases attended college only a few weeks or months.²³ Of the three men on the first Court only Bennett had attended college. Field was the Court's first college graduate. While Traynor is the only man to come to the Court with a Ph.D., Belcher, Harrison, Sloss, Jeremiah F. Sullivan, and Conrey held master's degrees. A good number of the justices have won honorary doctors' degrees.²⁴ Thirty-seven of the justices attended law schools, with Hastings College of the Law, founded by the first Chief Justice, leading in law school representation.²⁵

As to their ages on coming to the Court, only five were under thirty-five, and all these during the Court's first five years. Murray was twenty-six, Wells, Bryan, and Terry thirty-two, and Bennett thirty-four. Sloss of later years was thirty-five. Youngest in recent years is Traynor at forty. The average age of all the justices at the time of accession during the first hundred years of the court's history is about forty-nine, and there were about the same number of men under forty-nine as over that age. Few accessions to the Court came between sixty-five and seventy, none between seventy and seventy-five, but three justices came there after their seventy-fifth birthdays—Van Dyke by election and Jeremiah F. Sullivan and Conrey by appointment.³⁰

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Fourteen of the justices were forty-niners.²⁶ Most of them came to the Court in its early years, although one, Van Dyke, was elected forty-nine years after his arrival in California.

Many of the justices have long lists of able opinions to their credit. Crocker wrote well over two hundred opinions in the seven months he was a justice, and despite the grumblings at the time as to fast justice a number of them have been selected by the casebook writers for law school use. Most of the justices have representation in law school casebooks, although somewhat strangely the casebooks contain more per curiam opinions than opinions of any single justice whose authorship appears.²⁷

The reports of the Supreme Court contain memorial notes on the death of many of the Court's members or former members. Not all have been so honored, however. When Terry was killed the Court felt so strongly about the incidents leading to his death that it refused to entertain a memorial motion.²⁸

Viewing the Supreme Court of California over the years, it may be seen that it has been and is a strong and influential Court. Many of its members have been men of outstanding ability. The greater number, however, have been representative lawyers. In this sense most of the justices have been average men; what they did to bring honor and prestige to the Court others could have done with the same opportunity. This is not said in derogation of the men who served but rather as a commentary on the impressive results which may be achieved by the devoted efforts of average men possessed of industry and character.

The lives of the justices tend to show that the law is not so jealous a mistress as reputed. They indicate a man may serve the law well and at the same time establish his home and family, engage in public life and worthwhile avocations, cultivate special talents, live his religion, and reasonably satisfy his social and recreational needs. True, there are rush periods when every successful lawyer or judge must subordinate everything to the professional calls upon him, but time may still be found for other things. Thus Baldwin proceeds to steal a little time for his pen; Shafter for a turn at the piano; Melvin for a song in a voice which will linger long in the memories of his listeners; Thompson for his shrubs and flowers; any number of the justices for their enjoyment of the outdoors; some for their collections of art and books; and so on

through any number of human interests, not omitting the seriousness with which McFarland played cards. The jealous mistress may even be put aside for a season. Thus Searls left the law for the plow, only to make his best showing in the law later on. Others have put aside the books for the sword in time of war.

A large portion of California's interesting history touches closely upon the lives of many of the men who have been the justices. The lives of the forty-niner justices give a fine view of the gold rush, a remarkable story in itself. Burnett was probably the biggest single influence in the organization of California's provisional government. His becoming chief judge of the superior tribunal set up under General Riley's direction is an introduction to the Mexican legal system and government in California.²⁹ With Burnett as first Governor, the state government got under way. Bennett and McKinstry were in the first Legislature, the former in the Senate, the latter in the Assembly, and through their activities there one gets a fine line on the "Legislature of a Thousand Drinks," and important beginnings in statecraft.

One of the most important initial issues was whether the common or civil law should become the basis of California's jurisprudence. Burnett recommended a mixed system. There were powerful advocates of the civil law. Bennett probably became the strongest champion of the common law.

The law practice of many of the justices, as well as their judicial opinions, leads into the highly important field of land laws, the Spanish and Mexican land grants, and the public land laws of the United States. Field, appointed from the California to the United States Supreme Court in 1863, was the greatest judicial architect of our mining law, and an important contributor to the development of other phases of public land law. This subject is not only a matter of land titles; it was from the beginning of the Republic and for many years thereafter the most important expression of the nation's social and economic policy.

Terry was one of the most conspicuous single figures opposed to the Vigilantes of 1856. Some of the justices were extreme die-hards on the slavery issue, which for a period was contested as bitterly inch by inch in California as in the other states where sentiment was evenly divided. The peak of the California contest was probably marked by the Broderick-Terry duel. Crocker, of extreme Northern and abolition

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views, was an outstanding leader in organizing the Republican Party in California; Currey was the Union Party candidate for Governor a little before public opinion finally swung to the North. Heydenfeldt, Thornton, and Terry represented the extreme views of the South; Cope, Crockett, and Baldwin, though of Southern backgrounds, were more moderate; Northerners Sprague and Sanderson were middle-of-the-roaders. Shafter, like Crocker, who even actively helped fugitive slaves escape into Canada, before coming to California, was a Northern extremist. One may properly have a curiosity what it was that held the Shafter and Heydenfeldt together in their professional and business relationships, strongminded as they were, and at opposite poles on the slavery issues.

When the Comstock Lode became the center of Nevada's colorful early history it contributed more to the upbuilding of San Francisco than to that of Nevada itself. The careers of Bryan, Terry, Baldwin, and McKinstry introduce this epoch in western history. To know Crocker's life is to know a great deal about the first transcontinental railroad, for which he was for many years general counsel.

What a fearless judge, directing an outraged grand jury, can do in putting down graft and corruption in municipal and state governments is illustrated by the work of Wallace as presiding judge of the superior court in San Francisco in 1891. Langdon's life cannot be told without going into the graft prosecutions in San Francisco soon after the earthquake and fire in 1906.

In the field of education Shafter's name assumes prominence by reason of his support of the College of California, then a denominational school, later to develop into the University of California; Hastings is remembered for his founding of Hastings College of the Law; Sawyer, McFarland, and Belcher for their work in connection with the founding of Stanford University. A lively interest in these institutions and in education generally has been maintained by many later justices.

Certainly the men who have been the justices of the Supreme Court of California must be included when note is made of those who have built the commonwealth. They have contributed much in shaping the form of the State.

FOOTNOTES

1. The commissioners were Isaac S. Belcher, Niles Searls, H. S. Foote, R. Y. Hayne, William F. Fitzgerald, James A. Gibson, Peter Vanclief, Jackson Temple, E. J. Pringle, E. W. Britt, John Haynes, N. P. Chipman, Wheaton A. Gray, J. A. Cooper, George H. Smith, and Ralph C. Harrison. Five of them, namely, Belcher, Searls, Fitzgerald, Temple, and Harrison, became justices of the Court, and are included with the eighty-five mentioned. Pictures of all the commissioners appear in *History of The Bench and Bar of California*, C. W. Taylor (1949), p. 21.

2. Sixteen have been born in New York, namely, Serranus Clinton Hastings, Nathaniel Bennett, Alexander Wells, Edward Norton, John Currey, Edwin B. Crocker, Lorenzo Sawyer, Augustus L. Rhodes, Addison C. Niles, John R. Sharpstein, Milton H. Myrick, Niles Searls, Walter Van Dyke, A. Van Rensselaer Paterson, William P. Lawlor, and M. C. Sloss.

Twenty have been born in California, namely, Charles H. Garoutte, Frank M. Angellotti, Matthew I. Sullivan, Thomas J. Lennon, Warren Olney, Jr., Charles A. Shurtleff, Terry W. Ward, William H. Waste, Emmet Seawell, Frank H. Kerrigan, John E. Richards, Jesse W. Curtis, William H. Langdon, Jesse W. Carter, B. Rey Schauer, Homer R. Spence, Raymond E. Peters, Thomas P. White, Maurice T. Dooling, and Mathew O. Tobriner.

3. Bennett, Murray, Heydenfeldt, Wells, Baldwin, Norton, Currey, Sawyer, Shafter, Wallace, McKinstry, Morrison, Sharpstein, Myrick, Thornton, Harrison, Sloss, the two Sullivans, Lawlor, Shurtleff, Ward, Kerrigan, and Tobriner have been classified as San Franciscans. Langdon was probably as much a San Franciscan as a Stanislaus County man. He has been classified for the present purposes, however, as coming to the Court from the latter county.

Ross was the first man to come to the Court from Los Angeles County. This was in 1880. Since then Van Dyke, Shaw, Wilbur, Myers, Shenk, Finlayson, Thompson, Conrey, Edmonds, Houser, Gibson, Schauer, McComb, White, and Peek have come to the Court from this county.

4. Connecticut: Stephen J. Field, Ralph C. Harrison, Jeremiah F. Sullivan.
Colorado: Marshall F. McComb.
Illinois: Robert F. Morrison, Frederick W. Henshaw, Henry A. Melvin, William A. Sloane, Douglas L. Edmonds.
Indiana: Lucien Shaw, John D. Works, Nathaniel Conrey.
Iowa: Curtis D. Wilbur, Frederick W. Houser, Paul Peek.
Kentucky: Walton W. Cope, David S. Terry, Joseph B. Crockett, William T. Wallace.
Massachusetts: Jackson Temple.
Michigan: Elisha W. McKinstry, Charles N. Fox.
Mississippi: William F. Fitzgerald.
Missouri: Hugh C. Murray, John J. DeHaven, Phil S. Gibson.
Ohio: Charles H. Bryan (likely N.Y.), William H. Beatty, William C. Van Fleet.
Pennsylvania: Henry A. Lyons, Thomas B. McFarland.
South Carolina: Solomon Heydenfeldt.
Tennessee: Alexander O. Anderson, Peter H. Burnett, John W. Preston.
Utah: Roger J. Traynor.

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Vermont: Oscar L. Shafter, Isaac S. Belcher, Silas W. Sanderson, Royal T. Sprague, John W. Shenk.
 Virginia: Joseph G. Baldwin, Erskine M. Ross, James D. Thornton.
 Wisconsin: Louis W. Myers, Ira F. Thompson.

5. Hastings, Lyons, Murray, Terry, Field, Cope, Sanderson, Currey, Sawyer, Rhodes, Sprague, Wallace, Morrison, Searls, Beatty, Matthew I. Sullivan, Angellotti, Shaw, Wilbur, Myers, Waste, Gibson.

6. The lawyers' sons were Anderson, Norton, Works, Beatty, Olney, Wilbur, Ward, Curtis, Gibson, and Dooling. The ministers' sons were Field, Myrick, and Shenk.

6a. Wallace, Shurtleff, and Tobriner.

6b. Heydenfeldt.

7. Hastings, Sawyer, Rhodes, Shafter, Temple, Belcher, Paterson, Garoutte, Harrison, Van Dyke, Wilbur, Olney, Sloane, Richards, Shenk, Langdon may be mentioned.

8. Hastings, Bennett, Burnett, Crockett, Sharpstein, McFarland, Fox, DeHaven, Van Dyke, Sloane, Richards, Shenk, Waste and Edmonds, reporting, journalism and printing.

Hastings, Heydenfeldt, Anderson, Terry, Burnett, Cope, Currey, Rhodes, Shafter, Crockett, Myrick, Searls, DeHaven, Sloane, Langdon, agricultural activities, may be mentioned without exhausting the list.

Heydenfeldt, possibly Bryan, Terry, Baldwin, and Fox, mining activities. This does not have reference to the several men who tried mining in the gold rush days.

9. Hastings helped establish St. Catherine's Convent at Benicia, donating the land for its buildings; Burnett wrote several books extolling the tenets of the Catholic Church; Thornton was an elder in St. John's Presbyterian Church in San Francisco; Ross donated substantial sums of money to various causes of the Episcopal Church; Van Fleet was for many years a vestryman in St. Luke's Episcopal Church in San Francisco; Chief Justice Waste was a trustee for many years of Epworth University Methodist Episcopal Church, South, in Berkeley.

10. The writer is not familiar with the religious affiliations of all the men who have been the justices of the Supreme Court, but of those in connection with which he has information there have been fifteen or more Catholics, nearly that many Congregationalists, the same number of Baptists, and two or three Christian Scientists, Unitarians, Methodists, and Presbyterians.

11. Hastings, Terry, McKinstry, McFarland, Fox, DeHaven, Wilbur, Spence, and McComb were big men, while on the other hand Myrick, Van Dyke, Ward, Conrey, Peters, and others were small of stature.

12. Hastings, until he joined the Catholic Church, Murray, Hendenfeldt, Wells, Terry before he came to California, Field, Cope, Sawyer, probably Crockett, Niles, Belcher, Sharpstein, Myrick, Searls, Fox, Garoutte, Henshaw, Van Dyke, Angellotti, Shaw, Melvin, Waste, Seawell, Richards, Shenk, Curtis, Finlayson, Thompson, Kerrigan, Edmonds, Conrey, Carter were Masons. Melvin, Lawlor, Seawell, Shenk, Thompson, and Lennon were Elks. Paterson, McFarland, Fox, DeHaven were Odd Fellows. Garoutte, Lennon, Seawell were Native Sons of the Golden West. It will be noted the writer has given fraternal information with regard to only about half of the men who have been the justices of the Supreme Court. He is not informed as to the others. While it

appears several of them had no fraternal connections, as for instance Jackson Temple, and others possibly who might be mentioned, it is not unlikely that some of those who have not been mentioned as having had some fraternal connection, nevertheless have been connected with some fraternal organization.

13. Hastings, Murray, Anderson, Wells, Terry, Burnett, Field, Currey, Temple, Wallace, McKinstry, Sharpstein, McFarland, DeHaven, Searls, and Works, may be mentioned without anywhere near exhausting the list.

14. Of the numerous political parties that have appeared in California through the years, one notes that men who had been the candidates of or had the indorsement of the following parties, the Whigs, Democrats, Free Soil Democrats, Lecompton and Anti-Lecompton Democrats, Douglas Democrats, Breckenridge Democrats, American Party or Know Nothings, Settlers and Miners, Temperance Party of 1855, Union Party, Republican Party, Independent Party of 1873, Workingmen's or American Party of 1886 and years following. Union Labor Party of 1898, and the Progressives of 1912 and following, have been elected to the Court. It does not appear that the following parties were ever successful in electing any representative to the Court: People's Party of 1864 and the years following, Union Republicans of 1867, Union Constitutional Party of 1869, Union Democrats of 1871, Liberals of 1872, Prohibitionists, Greenbackers, New Constitution Party, Greenback Labor, Grangers, Socialists, National Democrats, Silver Republicans of 1896, Populists, Social Democrats of 1900, or the Independence League of 1906.

15. McFarland, for instance, was a foe of many of the reforms that were advocated at this time, and was one who predicted evil results if they should be passed, while Terry on the other hand was an ardent advocate of many of the so-called radical proposals. Sharpstein took the stump for the new Constitution.

16. The following were elected directly by the people: Heydenfeldt, Terry, Field, Baldwin, Cope, Norton, Sanderson, Currey, Sawyer, Rhodes, Shafter, Sprague, Wallace, Niles, McKinstry, Morrison, Ross, Sharpstein, McKee, Myrick, Thornton, Paterson, McFarland, Beatty, DeHaven, Garoutte, Henshaw, Van Dyke, Shaw, Angellotti, Lawlor, Lennon, Seawell, Kerrigan, Preston, and Langdon; the following were originally appointed by the governor: Murray, Anderson, Wells, Bryan, Burnett, Crocker, Temple (but was elected in 1886, again in 1894), Belcher, Searls, Works, Fox, Fitzgerald, Van Fleet, Melvin, Matthew I. Sullivan, Wilbur, Olney, Lorigan, Sloane, Shurtleff, Waste, Myers, Richards, Shenk, Curtis, Finlayson, Jeremiah F. Sullivan, Thompson, Conrey, Edmonds, Houser, Crockett, Sloss, Ward, Harrison, Carter, Gibson, Traynor, Schauer, Spence, McComb, Peters, White, Dooling, Tobriner, and Peek. Hastings, Lyons, and Bennett were elected by the first Legislature in 1849. After Field was elected to the Supreme Court Burnett resigned. Field was thereupon appointed to serve out the brief period until the term for which he was elected should commence. Although he first came to the Court by appointment he has been classified as an elected judge, having been elected before he was appointed, although he qualified first under the appointment.

17. Bennett, Lyons, Heydenfeldt, Terry, Field, Sanderson, Shafter, Temple, McKinstry, Ross, Paterson, Henshaw, Angellotti, Sloss, Wilbur, Olney, Myers, Kerrigan, Preston, and Curtis.

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18. *The Reporter* (Phi Alpha Delta Legal Fraternity publication) (February, 1960), 2.

19. Curtis, Edmonds, Spence, Dooling, White.

20. Murray, Wells, Sprague, Temple, Morrison, Sharpstein, McFarland, Beatty, Van Dyke, Melvin, Lawlor, Lennon, Richards, Thompson, Conrey, Seawell, Langdon, Houser, Carter, and Shenk died in office.

21. The following served in the California Assembly: Conrey, Cope, DeHaven, Field, Finlayson, Fox, Houser, McFarland, McKinstry, Preston, Sanderson, Spence, Peek, Van Dyke, Van Fleet, Wallace, and Waste. Anderson, Bennett, Bryan, DeHaven, Sprague, Searls, Van Dyke, and Carter served in the Senate. Baldwin served in the Legislature in Alabama before coming to California, Works in Indiana, Crockett in Kentucky and Missouri, and Hastings in Iowa.

22. Field is the only one who served as an alcalde; Henshaw, Melvin, and Kerrigan served as justices of the peace; Murray, Sloane, and Edmonds in municipal courts; Niles in a county court; Myrick in the old San Francisco probate court; Norton, Sawyer, Temple, Belcher, McKinstry, Morrison, Sharpstein, McKee, Thornton, McFarland, and Searls, as district court judges; Paterson, DeHaven, Garoutte, Van Fleet, Angellotti, Henshaw, Van Dyke, Lorigan, Shaw, Sloss, Melvin, Lawlor, Lennon, Sloane, Waste, Myers, Seawell, Kerrigan, Richards, Shenk, Curtis, Finlayson, Langdon, Thompson, Conrey, Edmonds, Houser, Schauer, Spence, McComb, White, and Dooling, as superior court judges; Sloane, Waste, Kerrigan, Richards, Curtis, Finlayson, Langdon, Thompson, Conrey, Houser, Schauer, Spence, McComb, White, Peters, Dooling, Tobriner, and Peek as district courts of appeal justices; Hastings served as a justice of the peace and later the Chief Justice in Iowa before coming to California; Heydenfeldt was a county judge in Alabama before coming to California; Burnett was a judge of the Supreme Court of the provisional government of Oregon, and the first chief judge of the superior tribunal of California set up by General Riley in accordance with the Mexican law; Beatty was a district judge and Chief Justice in Nevada; and Fitzgerald was a justice of the Supreme Court of the Territory of Arizona. The following, as far as the writer is informed, had no prior judicial experience before coming to the Supreme Court: Lyons, Bennett, Anderson, Wells, Bryan, Terry, Baldwin, Cope, Crocker, Sanderson, Currey, Rhodes, Shafter, Crockett, Sprague, Wallace, Ross, Works, Fox, Harrison, Matt I. Sullivan, Jeremiah F. Sullivan, Olney, Shurtleff, Ward, Preston, Carter, Gibson, and Traynor.

23. Six, Henshaw, Olney, Waste, Thompson, Traynor, and Peters attended the University of California: three, Field, Temple, Niles, Williams College; three, Shafter, Currey, Harrison, Wesleyan University of Middletown, Connecticut; three, Richards, Seawell, and Shurtleff, predecessors of College of the Pacific; three, Curtis, Edmonds, and White, University of Southern California; two, Norton and Sanderson, Union College; two, the two Sullivans, St. Ignatius in San Francisco; two, Bennett and Rhodes, Hamilton College; two, Beatty and Thornton, University of Virginia; three, Spence, McComb, and Tobriner, Stanford; two, Lorigan and Dooling, Santa Clara University, Lorigan also attending St. Vincent's at Cape Girardeau, Missouri; and one each of the following: Belcher, University of Vermont; McKee, Ogelthorpe; Conrey, DePauw; Sloss, Harvard; Richards, University of Michigan; Sloane, Grinnell; Shenk, Ohio Wesleyan; Myers, University of Wisconsin; Fitzgerald, St. Mary's in Kentucky; Lennon, St. Mary's in Oakland; Houser, Lennox College; Preston, Burritt College in Tennessee and Bethany College in West

Virginia; McKinstry, Gambier (predecessor of Kenyon College); Sawyer, Western Reserve (Sawyer did not enter the college proper, but attended the preparatory department of Western Reserve College one year); McFarland, Marshall College, Mercersburg, Pennsylvania; Wilbur, Annapolis; Ross, Virginia Military Institute; Langdon, San Jose Normal School; Crocker, Rensselaer Institute, New York; Gibson, University of Missouri; Schauer, Occidental College; White, St. Vincent's, Los Angeles; and Peek, Oregon State College. It may be that one or two of the foregoing, like Gambier and Western Reserve, for instance, were no more than academies at the time, and therefore perhaps should not be spoken of as institutions of college rank. A fairly large number of the justices passed through what was known in their day as academies, institutions comparable to the high schools of the present time.

24. Field and Currey, Williams College; Rhodes, Hamilton College; Shafter, College of California; McKinstry and Richards, University of Michigan; Matt I. and Jeremiah F. Sullivan, St. Ignatius (this institution also conferred upon Matt I. Sullivan the degree of J.U.D.—Juris Doctor Utriusque); Wilbur, University of Southern California, Occidental College, and Pennsylvania Military Institute; Beatty, Shaw, and Olney, University of California; Shurtleff and Seawell, College of the Pacific; Myers, University of California and University of Southern California; Shenk, Ohio Wesleyan University and University of Michigan; Curtis and Edmonds, University of Southern California; Carter, Golden Gate Law College; Lorigan, Santa Clara University; Preston, Bethany College, West Virginia; Waste, University of Southern California, College of the Pacific, and Pacific School of Religion; Gibson, Southwestern University, University of Missouri, College of the Pacific, McGeorge College of Law, University of Southern California, University of California; Schauer, Southwestern University; Traynor, University of California, University of Chicago, and University of Utah; and McComb and White, Loyola University.

25. Angellotti, Melvin, Matt I. Sullivan, Lawlor, Olney, Shurtleff, Waste, and Finlayson all attended Hastings College of Law; four, Richards, Shenk, Curtis, and Conrey, attended the University of Michigan Law School; four, Henshaw, Thompson, Traynor, and Peters the University of California; four, Edmonds, Houser, Schauer, and White, the University of Southern California Law School; Ward, Spence, and Dooling, Stanford; four, Shafter, Morrison, Sloss, and Tobriner, Harvard Law School; two, Harrison and Paterson, Albany Law School of Albany, New York; two, Temple and McComb, Yale; with one from each of the following: Searls, State and National Law School, Cherry Valley, New York; Myers, University of Wisconsin Law School; Shaw, Indianapolis Law School; Carter, Golden Gate Law School, San Francisco; Gibson, University of Missouri Law School and the Inns of Court in England; Peek, University of Oregon. It will be noted the far greater part never attended any law school. Shafter was the first law school man to come to the Court.

26. Hastings, Lyons, Bennett, Murray, Wells, Bryan, Terry, Field, Norton, Van Dyke, Currey, McKinstry, Searls, and DeHaven.

27. This has been verified by a check of some 200 case-books in the San Francisco County Law Library (up to 1936).

28. A. E. Wagstaff, *Life of David S. Terry*, p. 435, Shuck (1901) 431.

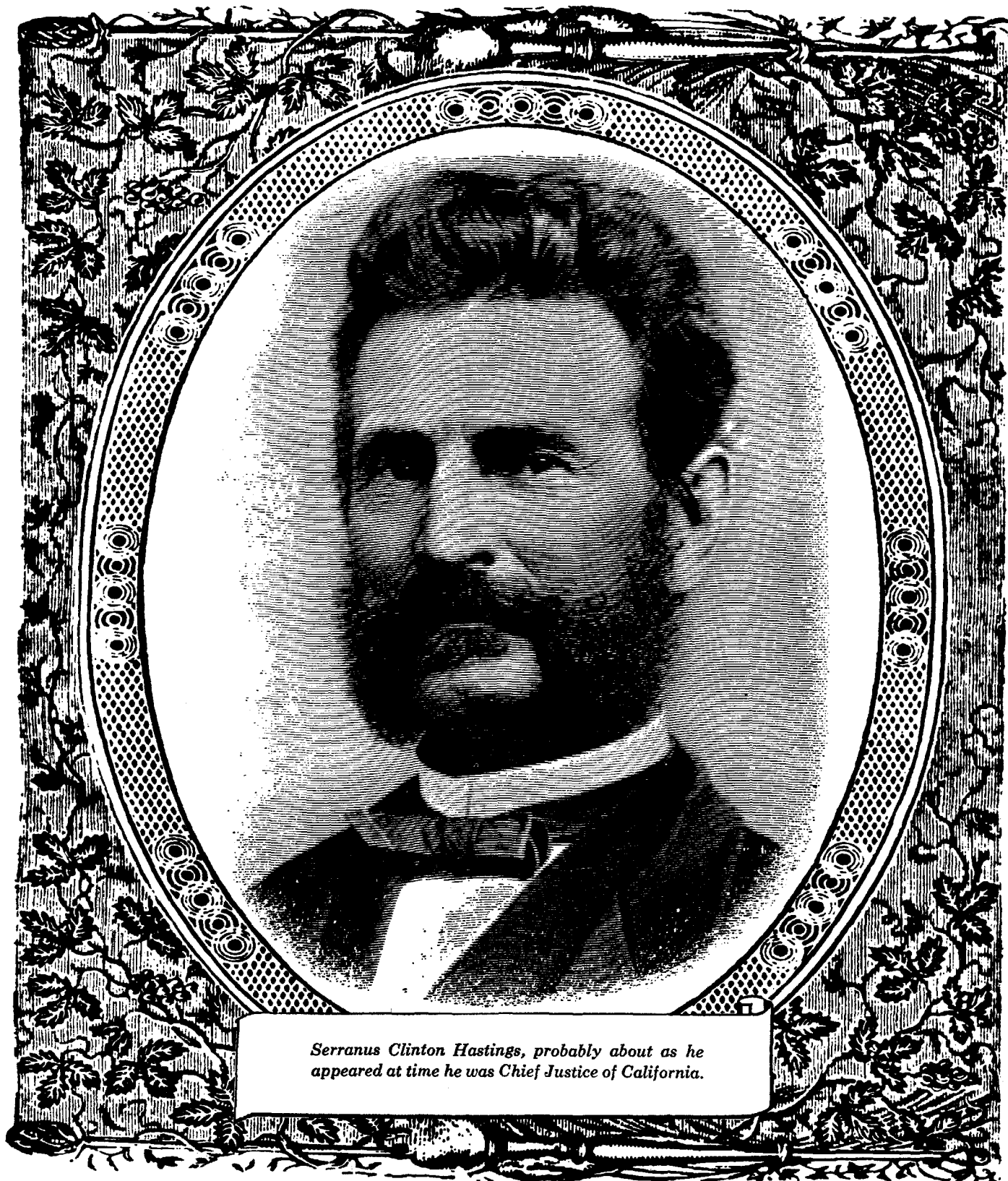
29. Burnett resigned to run for governor and Kimble H. Dimmick was appointed in the latter part of 1849. The superior tribunal was sometimes called the Supreme Court.

PREFATORY NOTE

30. Classifying the justices of the first hundred years as to the age they came to the Court into five-year groups, one gets the following:

25 to 30	30 to 35	35 to 40	40 to 45	45 to 50	50 to 55	55 to 60	60 to 65	65 to 70	70 to 75	75 to 80
Murray	Bennett	Hastings	Lyons	Burnett	Norton	Anderson	Searls	Sloane	—	Van Dyke
—	Wells	Heydenfeldt	Field	Crocker	Sprague	Crockett	Fox	Richards	—	Jeremiah F.
—	Bryan	Cope	Baldwin	Currey	Morrison	Sharpstein	Lawlor	Houser	—	Sullivan
—	Terry	Sanderson	Sawyer	Shafter	Myrick	McKee	Shurtleff	—	—	Conrey
—	—	Niles	Rhodes	Belcher	Beatty	Thornton	Seawell	—	—	—
—	—	Ross	Wallace	McKinstry	Wilbur	McFarland	Curtis	—	—	—
—	—	Paterson	Temple	DeHaven	Lennon	Harrison	Finlayson	—	—	—
—	—	Garoutte	Works	Fitzgerald	Myers	Shaw	—	—	—	—
—	—	Henshaw	Van Fleet	Lorigan	Kerrigan	Matt I.	—	—	—	—
—	—	Angellotti	Melvin	Olney	Waste	Sullivan	—	—	—	—
—	—	Sloss	Traynor	Shenk	Langdon	—	—	—	—	—
—	—	Ward	—	Preston	Carter	—	—	—	—	—
—	—	—	—	Thompson	Schauer	—	—	—	—	—
—	—	—	—	Edmonds	—	—	—	—	—	—
—	—	—	—	Gibson	—	—	—	—	—	—
1	4	12	11	15	13	9	7	3	0	3

McComb, Peters, White, Dooling, Tobriner, and Peek are not included in the above tabulation, having come to the Court after the first hundred years.



Serranus Clinton Hastings, probably about as he appeared at time he was Chief Justice of California.

SERRANUS CLINTON HASTINGS

First Chief Justice, January 3, 1850-January 1, 1852

There is not, in my opinion, in the whole compass of human affairs, so noble a spectacle as that which is displayed in the progress of jurisprudence; where we contemplate the cautious and unwearied exertions of a succession of wise men through a long course of ages, withdrawing every case as it arises from the dangerous power of discretion, and subjecting it to inflexible rules; extending the dominion of justice and reason, and gradually contracting, within the narrowest limits, the domain of brutal force and arbitrary will.

From an address by Serranus Clinton Hastings to the students of the University of California, Nov. 10, 1880, quoting Sir James MacKintosh.¹

To Serranus Clinton Hastings will always go the distinction of heading the long procession of "wise men" who have been or may hereafter become the justices of the Supreme Court of California. This fact alone would be sufficient to assure him a permanent place in the history of California. Aside from this, however, he is not without an outstanding record both as regards his career before he came to California and after he left the Court. While not necessarily a great lawyer, he was a very successful one, and though not a Stephen J. Field or a Lucien Shaw on the bench, nevertheless commanded a respect in the departments where he did shine, as great as that yielded these men as jurists. Born in modest circumstances, he made his million. Without great educational opportunities as a youngster, he later founded a college. There were periods in his life when he was a dominating influence in political matters. He came to be more than a passing influence in his church. As a pioneer Peter H. Burnett scarcely outshone him. He was possessed of an active, inquiring mind. His towering physical stature, impressive mien, engaging personality, and more than ordinary powers of persuasion contributed much to his qualities of leadership. He was entirely human, liked liquor, profaned on occasion, and did not mind a little fun and frolic even to the last.

Hastings was born November 22, 1814, in Jefferson County, New York, and was the son of Robert Collins and Patience (Brayton) Hastings. The particular locality of his birth was not improbably Wilna, located some eighteen miles northeast of Watertown, where his parents settled some months prior to his birth, although Watertown is generally set out in the sketches relating to him as his place of birth. His father was elected the collector and constable of Wilna at the first town meeting. Thomas Brayton, not improbably a brother of Hastings' mother, was

elected a supervisor. A number of Hastings and Braytons lived in Wilna during these early years.^{1a}

Hastings was one of the seven children born to his parents. That all of them grew to maturity has been mentioned as proof of their sturdiness. While Hastings was able to point to a distinguished ancestry on both his father's and mother's side his parents were nevertheless plain Americans, who commenced life without any special advantage. His father, said to have been born in Boston, migrated in young manhood to western New York. Here it was that he met and married Patience Brayton, whose family had been among the first settlers of this section. He was a mechanic by trade, possibly a carpenter. Wilna's assessment roll for the year 1825 shows him the owner of thirty-nine acres of land there at that time. From this it would appear he was not operating, agriculturally at least, on any extensive scale.²

When Hastings was about ten years old his family moved to Geneva, located about half way between Wilna and Buffalo in the beautiful Finger Lake area. Here his father died shortly afterward, leaving the rearing and educating of his young family to Hastings' mother. That Hastings shared with them many hardships cannot be doubted. Like many another who has come to the front, his mettle was tested while still in youth. Soon after his father's death the family seems to have moved to Gouverneur, located in St. Lawrence County, only a short distance from his original home in Jefferson County. In any event, Hastings at this time became a student in the Gouverneur Academy, attending for a period of six years. While this institution probably had no higher rating than the high school of the present day, if its rank was even that high, it nevertheless seems to have been manned by a group of able and well trained teachers, some of whom had received their education at Hamilton College.

THE CALIFORNIA JUSTICES

At twenty, Hastings is reported to have become the principal of Norwich Academy, in Chenango County, in south-central New York, distant some hundred miles or so from Gouverneur. It is not known that he had done any teaching prior to this time, but regardless of whether he had or had not, the fact that he was chosen for this position would indicate he must have had a good scholastic record and favorably impressed those in a position to judge his educational and personal qualities. No doubt he had the marks of a young man of promise. It is reported he introduced at Norwich the methods that had been in vogue at Gouverneur, bringing new life and spirit into the school. That the fires of ambition were aflame is evident from the fact that he commenced the study of the law while discharging his duties as a teacher, studying in the office of a lawyer by the name of Charles Thorpe.³

He did not remain long at Norwich, but as the school year came to a close went to Lawrenceburg, Indiana, located on the Ohio, a short distance from Cincinnati. Here he continued his study of the law in the office of Lane & Majors. (Amos Lane and Daniel S. Majors.) Lane & Majors were men of ability and experience. Mr. Lane was serving in Congress at the time Hastings came to Lawrenceburg.

The following year, 1836, a presidential year, Hastings founded and edited a weekly newspaper called the *Indiana Signal*. The first issues bear the legend, "Edited and Published by S. C. Hastings."⁴ It was published in Aurora, four miles down the Ohio from Lawrenceburg, and was the first paper published in this community.⁵ After a short time a man by the name of Stone became associated with him, after which the publishers and editors were set out as Hastings and "P. Stone." This paper was published almost entirely in the interest of the Democratic Party, and was in a great degree a reprint of matter appearing in other partisan Democratic papers of the time. Assuming the editorials are Hastings' where he alone is set out as the editor, an idea of his writing style and political thinking of this period may be gathered. While one is not particularly impressed with his literary gifts, there is no gainsaying that he was disposed to hit with all the force at his command, and that he did not hesitate to use vigorous language in exposing his political opponents. Van Buren, whom he supported for the presidency, was elected, but Mr. Lane, for whom he had also exerted his best energies,

was defeated for re-election to Congress. With the campaign over, the *Indiana Signal* soon came to an end. Also Hastings' interest in this part of the country.

In December, 1836, he went to Terre Haute, where he submitted himself to a "severe legal examination"⁶ and was admitted to the bar. The examination is reported to have been conducted by "Judge Porter." This was probably Circuit Judge John R. Porter.⁷ Hastings did not remain in Indiana, however, but proceeded almost immediately into the Black Hawk Purchase country, then in process of being rapidly settled.

While the details of his life at this time may not be fully known, it is nevertheless known that the country was young and overflowing with opportunities for young men of ambition, energy, and purpose. Hastings possessed all these qualities. Filled with the energy and courage of youth, he seemed free as well as disposed to make the most of it, striking boldly out upon the new and untried paths as they opened before him.

Hastings arrived in Burlington early in 1837, probably in January. A vast region then known as the Iowa District, comprising what later became Iowa, Minnesota, and a portion of the Dakotas, was at that time a part of the newly organized Territory of Wisconsin.⁸ Prior to 1836, the year Wisconsin was organized into a territory, this area had been part of Michigan Territory. While still a part of Michigan, it had been organized into two counties, the southerly portion, which later largely went to make up the State of Iowa, into Des Moines County, and the northerly portion, which later went to make up Minnesota and a portion of the Dakotas, into Dubuque County. The first court ever held in Des Moines County convened in 1835, less than two years before Hastings' arrival. The judge, Isaac Loeffler, received his appointment from the Governor of Michigan Territory.⁹

One of the first things Hastings did upon arriving in Iowa was to seek admission to the bar. This brought him before Judge David Irwin, of the Wisconsin Territorial Supreme Court, where he was admitted.¹⁰ Shortly thereafter he was appointed a justice of the peace by Governor Henry Dodge.¹¹ At least one of his decisions as a justice of the peace, wherein he ordered the defendant fined, whipped, and banished, has survived oblivion.¹²

SERRANUS CLINTON HASTINGS

First Chief Justice

Hastings remained in Burlington only a few months and in the spring went to Bloomington. Bloomington became his home the dozen years he lived in Iowa. To avoid confusion in the mails, shipping, etc., resulting from Illinois also having a Bloomington, the name of Bloomington, Iowa, was changed to Muscatine. The first settler, J. W. Casey, had built his cabin there only two years before Hastings arrived.¹³ Here Hastings married Azalea Bratt (Bratt), a native of Cleveland, in 1839. Her parents, Samuel and Lydia (Russell) Bratt, came to Iowa in its first years, settling in Moscow, some fifteen or twenty miles from Muscatine. She was of Dutch descent. Her father had been born in Holland in 1774. Hastings built his home on one of the prominent hills or bluffs overlooking the Mississippi. His oldest daughter, visiting Muscatine in the sixties, mentions the beautiful view which their old home commanded.¹⁴

For some years Hastings practiced alone, making headway in building up a practice in Muscatine and the neighboring counties. In 1840 he formed a partnership with J. Scott Richman who had come to Muscatine in 1839, and to whom he is said to have been attracted by his natural ability and studious ways. This connection continued until 1848 when Hastings became the Chief Justice of Iowa.¹⁵ While Hastings made his bitter enemies, Richman is said to have "never made an enemy."¹⁶

That Hastings acquired the reputation of being a shrewd and clever lawyer in Iowa cannot be doubted. "A good lawyer, calculated to win, for he had plenty of brains," writes Hawkins Taylor, adding satanically that he was also "without conscience."¹⁷ From a reply which Suel Foster, Hastings' brother-in-law, made to Mr. Taylor, as well as from what Taylor himself set out, it may be gathered Hastings enjoyed a good criminal practice. "He is charged by Mr. Taylor of being a lawyer for the criminals," wrote Mr. Foster. "What of it," was his rejoinder. "What criminal is without a lawyer? or what lawyer declines to serve in that capacity?"¹⁸ Apparently there was considerable criminal business as the new American communities were springing up.

When Hastings came to Iowa there was a lawyer residing in Davenport by the name of Alexander McGregor, who had a reputation of vanquishing all opponents by his ferocity. "He was very abusive when

handling a case. It was his game to scare the other side out of their case before a jury if he could. The first case Hastings had after he came to Muscatine, he found McGregor on the other side—and McGregor attempted his old tactics, and Hastings met him on his own grounds. When McGregor abused his witnesses, Hastings abused McGregor and astonished court and jury by daring to do such a thing."¹⁹ Hastings is reported to have won his case.

Mr. Taylor mentions an occasion when a man by the name of Joe Leverage was accused by the grand jury of stealing a horse. He retained Ralph P. Lowe to represent him, but as the time of trial approached wished to have Lowe associate Hastings with him. This did not meet with Mr. Lowe's approval, Lowe feeling entirely equal to any demands that might be made upon him without Hastings' assistance. His client, however, persisted in the suggestion. "Finally, Lowe got so vexed that he told Joe that he would give up the case, and that he might employ Hastings. 'Oh, no! oh no!' says Joe, 'I can't do without you,' and, lowering his voice to a whisper, he said, 'It may become necessary to steal the indictment.' Lowe told him that if that was the object, he must employ Hastings or someone else than himself." He then adds, "Joe got off without the indictment being stolen."²⁰ This is a scurrilous story, indeed, and only one of several that Mr. Taylor recites, but considering the evident animus with which they were told and the place Hastings, despite all his faults, established for himself, both in Iowa and California, it does not appear their repeating can do Hastings' name any harm at this time. At the same time they may serve to illustrate somewhat the rivalries he encountered.²¹

Hastings' success at the bar may be judged somewhat by comparing his record with the record of the lawyers of his time, as revealed by the first Iowa Supreme Court reports. He made his first appearance as counsel of record here in 1841.

After statehood and up to the time he appears in the reports as the Chief Justice of the Supreme Court of Iowa, the name of Hastings appears more times than that of any other lawyer. He appeared as counsel in eight different appeals that are reported for this period, and was disqualified from taking part as a justice in an additional two by reason of having been counsel. He was one of approximately forty lawyers or firms of lawyers appearing for this period.

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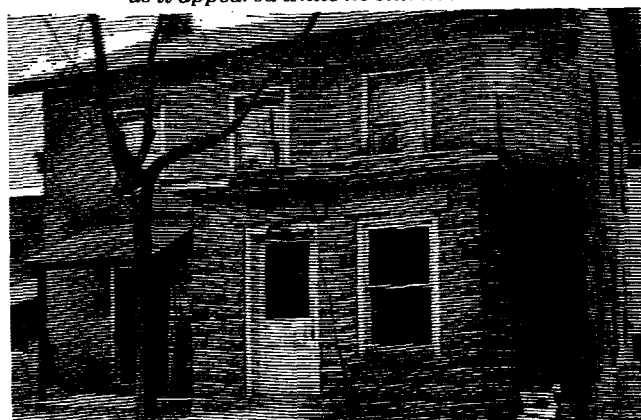
Azalea Bradt Hastings, wife of Serranus Clinton Hastings, as she appeared on the occasion of her presentation to Empress Eugenie in the late sixties.



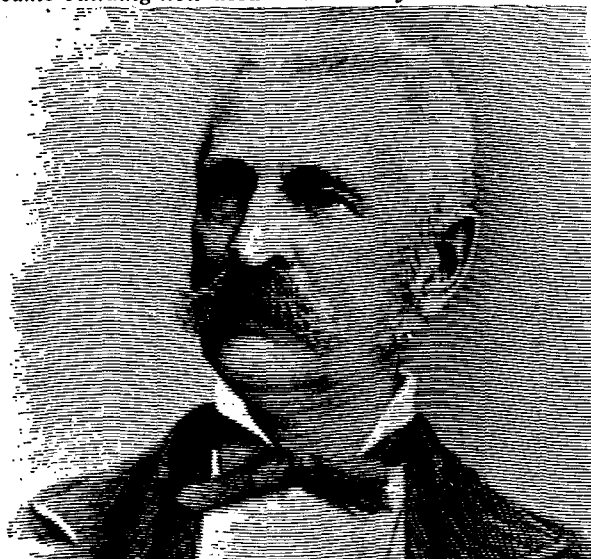
Flora Azalea Hastings, born at Benicia, California, Oct. 11, 1859. Died Nov. 10, 1889. Named after the first Flora.



Hastings' home, "Madrone Villa," at Rutherford as it appeared while he still lived in it.



Building where the Gouverneur Academy is said to have carried on when Hastings was a student there. This picture was taken in 1934. Wrote H. R. Freeman, Mayor of Gouverneur Village, in a letter dated June 1, 1932, to the writer, referring to above building: "It is my belief, after investigation, that the above mentioned school is the same building now used as a laundry on John Street."



Hastings, as he appeared at the time he founded Hastings College of the Law

SERRANUS CLINTON HASTINGS

First Chief Justice

From the record revealed here it would appear Hastings fully established himself as a successful lawyer and one of the leaders of Iowa's early day bar. He prospered at least moderately in a financial way. He is said to have made some good land investments, the profits of which were later to help him when he began capitalizing upon the opportunities that he was to find in California.²²

Shortly prior to the meeting of the second Wisconsin Territorial Legislature in Burlington on the first day of November, 1837, a call was issued for a convention of delegates from the west side of the Mississippi to memorialize Congress on a number of matters, including the matter of the organization of a separate territorial government for that part of Wisconsin lying west of the Mississippi.

Hastings was among the delegates to this convention. He was appointed one of the committee of seven who prepared and reported the memorial which was adopted and presented to Congress asking for separate territorial organization.²³ On June 12, 1838, Congress passed a law effective July 4th, organizing the district referred to into the Territory of Iowa. It provided for a Legislature consisting of an Assembly of twenty-six and a Council of thirteen.

Hastings was elected a member of the first Assembly, from Muscatine County. This first Legislature consisted in a large degree of young men. It is reported fourteen of the twenty-six in the Assembly were under thirty-five years of age and ten members of the Council under forty.²⁴ James W. Grimes, who later became Governor of Iowa, and still later a distinguished United States Senator, is reported to have been the youngest, being but twenty-two years of age.²⁵ Hastings was twenty-six at the time.

As a member of the first Legislature, and of the judiciary committee of the Assembly, Hastings had an important hand in formulating for the territory a complete body of local law.

In 1840 Hastings was elected a member of the Council, and served therein the third, fourth, seventh, and eighth Legislatures. Here he was a member of the judiciary committee in the third and eighth sessions.

Early in the history of the territory there developed a bitter fight between the first Governor, Mr. Lucas, and the Legislature. It was the feeling that the former was encroaching unduly upon the province of the

Legislature. Although of the same political party as the Governor, Hastings took a prominent part in opposing him and joined in a petition to President Van Buren for his removal.²⁶ The controversy resulted in an act of Congress (March 3, 1839) amending the organic law of the territory to curtail the Governor's powers.²⁷ In 1845 Hastings was honored with the presidency of the upper house of the territorial Legislature. Although he had no more than commenced his interesting career, he was already spoken of as a man of "much experience."²⁸

A number of the men who have been the justices of the Supreme Court of California have seen service in Legislatures. Hastings' experience in this field was undoubtedly greater than that of any of them.

In 1839, the boundary difficulty with Missouri, inherited from former days, took on acute proportions, and led to what has sometimes been called the "Missouri War."

Governor Lucas of Iowa ordered J. B. Browne to call out the militia and march to the defense of the Iowa officials of Van Buren County. About twelve hundred men responded to the call.²⁹ Hastings, who was a major in the state militia, left his seat in the Assembly and proceeded to Muscatine. His name is generally mentioned in connection with the part the "Muscatine Dragoons" played in this affair. While one of the leaders, Hastings was not in command. They marched in the dead of winter across the State of Iowa to the Missouri line. The obnoxious sheriff of Clark County, Missouri, was captured in some manner without resort to violence, and carried triumphantly to Muscatine. Some accounts are to the effect that he was lodged in the Muscatine County jail.³⁰ Others set out that he was never incarcerated in any prison.³¹ In 1849 the matter was finally settled by the Supreme Court of the United States.^{31a}

At the April election in 1846, delegates were chosen to frame a proposed constitution for Iowa. Two proposed constitutions had already been submitted to the people and rejected, largely by reason of the people's dissatisfaction with the proposed boundary lines, and this was, therefore, the third attempt to work out something suitable. The convention met on May 4th in Iowa City and on the 19th its work was completed. The proposed constitution was submitted to the people and accepted by a vote of 9,492 to 9,036 on August 3, 1846. In passing it may be noted this

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Constitution was not without its influence on California, copies thereof being printed and distributed for use of the members of the California Constitutional Convention which met at Monterey in 1849, where it figured prominently as one of the working models.³² Several of its provisions, like the direct election of judges, reflected the democratic trend of the time.

Upon the adoption of the Constitution, Governor Clarke issued a proclamation for an election of state officers. In the election that followed, Hastings was elected to Congress.

On the 15th of December, 1846, A. C. Dodge, the congressional delegate from Iowa, presented to the national House of Representatives the Constitution approved by the voters of Iowa. It was referred to the committee on territories and on the 17th of December Stephen A. Douglas of Illinois reported a bill for the admission of Iowa into the Union. On the 21st the bill passed the House and was immediately sent to the Senate. It was promptly passed by the Senate, and on the 28th day of December, 1846, signed by the President of the United States, whereupon Iowa became the twenty-ninth state of the Union.³³ It may be observed that chronologically Iowa and California are *closely related*, California being the thirty-first state admitted, with Wisconsin coming in between them. Hastings and Leffler took their seats in the House of Representatives December 29th, having been in Washington for some time working in the interest of statehood. Hastings is reported to have been, with a single exception, the youngest member in the *twenty-ninth* Congress.³⁴ He was then thirty-two. No doubt he found things interesting in a high degree the little period he served, the country being at war with Mexico at the time. As the war had commenced before he became a member, however, he took no part in the deliberations incident to the severing of diplomatic relations.

It was probably about this time that Hastings first became acquainted with Lincoln. Hastings' daughter, Clara Louise, was under the impression her father and Lincoln first met while serving together in Congress.³⁵ Hastings, however, served during the latter part of the twenty-ninth Congress which came to an end March 4, 1847, while Lincoln served in the thirtieth Congress. They do not appear, therefore, to have been colleagues as was assumed by Hastings' daughter and as has been set out by various writers.³⁶

As Hastings served only a couple of months, it goes without saying he did not have an opportunity to do a great deal. He made the most of such opportunity as he had, however. He is mentioned in the *Congressional Globe* in connection with a number of matters limited to the interests of his constituents.

Upon the inauguration of Ansel Briggs as the first Governor of Iowa in December, 1846, and after Hastings had gone to Washington, the Democrats in one of their caucuses agreed upon Hastings, John F. Kinney, and George Greene as their candidates for the justiceships of the Supreme Court of Iowa. Under the law these positions were to be filled by the Legislature. Due to a deadlock, however, the joint convention of the Legislature which convened to attend to this and other business adjourned until January 5, 1847, without electing anyone.

Joseph Williams' term as Chief Justice expired on January 25, 1848, whereupon Hastings was appointed. He filled this position until January, 1849. During the year Hastings sat as Chief Justice the Court rendered ninety-two written opinions, Hastings writing forty-two of them.

That Hastings entertained senatorial aspirations in Iowa there can be no doubt. When Shepherd Lefler, his colleague in the House of Representatives, sought re-election, one of the objections raised to him was that "he had entered into a bargain with S. C. Hastings by which he was 'to use his official and personal influence' to get Hastings elected to the United States Senate."³⁷ While there is not much of anything in the Iowa literature on the matter, he seems to have made a definite bid for the senatorship shortly before he came to California, and to have failed. His oldest daughter, writing about her first years in California, observes: "Father ran for the United States Senate in the year 1850, was defeated and came to California with a large party from Wisconsin across the plains . . ."³⁸ Of course, his daughter was mistaken in stating he ran for the Senate in 1850, as he arrived in California in August 1849.³⁹ While the California fever had undoubtedly hit Hastings, it is probable this defeat may have influenced him in his decision to come to California at that time. There was a very great exodus from Iowa, as well as the rest of the country, at that time. "The tide of immigration which had been flowing into the prairie States was suddenly diverted toward the newly discovered gold-fields of California . . ."⁴⁰

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Hastings left his family in Iowa when he first came to California. They followed a little later, coming by way of the Mississippi, New Orleans, and the Nicaragua Route. He had his household goods shipped by way of the Horn. Hastings was at this time going on thirty-five years of age. There were four children in his family, Marshall, Clara Louise, C. F. Dio, and Flora, all born in Muscatine.

There is a hint of the tastes of Hastings' family as relates to horses in the fact that Hastings brought with him three fine Kentucky-bred saddle horses, one or the other of which he probably rode in making the journey. These belonged to his wife. Affectionate references to the horses owned by different members of the family appear through the fragments that have been left relating to their family life. "Mother was a lovely horsewoman—in fact considered the best lady rider in the country—and always had an animal which no one cared to ride but herself," writes Hastings' oldest daughter, speaking of her girlhood days at Benicia. "I had at this time," she continues, "a lovely white horse, and my saddle and bridle were perfectly black."⁴¹ It was a common practice for her and her mother to go riding together. On one occasion W. W. Cope, also later a Chief Justice, mentioned to Hastings that he was in need of a horse that would be suitable for his wife and children, whereupon Hastings gave Mrs. Cope a fine horse. This animal, called Rock, became a great pet in the Cope family.⁴² Hastings' second wife has mentioned the pleasure with which Hastings in his last years drove a black horse called Lodi.⁴³ Hastings' oldest son, Marshall, lost his life when thrown from a horse near their Rutherford home. That the horse played a part in this household is evident.

As the immigrant party was approaching the Sierras it was threatened by hostile Indians. Hastings mounted the fastest of his horses and rode to the nearest military post and procured assistance. This fact is referred to here and there in the literature pertaining to Hastings. The writer also has it from one of Hastings' granddaughters who as a youngster heard him tell about it.⁴⁴

When Hastings arrived, steps for organizing a state government were under way. Peter H. Burnett and others had pressed the idea of the people themselves organizing a provisional government until such time as the federal government should be ready to act. About two weeks before Hastings' arrival General

Bennett Riley had issued two proclamations, one calling an election in September to select delegates to a constitutional convention to meet at Monterey in November, and the other, branding the leaders of the provisional government movement as usurpers. General Riley instructed the people to vote for the various officers known to the Mexican law at that time, to serve until a state government should be formed, and indicated he would appoint to the respective offices any competent and unobjectionable person receiving the highest number of votes.

The details of Hastings' activities upon arriving in California are more or less scant. He received some law business from the start. He also proceeded to engage in a money deposit business. Only three days after he entered upon this business he reported the deposits already were \$20,000.⁴⁵ He also proceeded to take some part in politics. At a meeting held in Sacramento October 29, 1849, "without distinction to party," "to hear the report of the delegates to the constitutional convention, and to consider matters connected with the approaching election," he acted as chairman.⁴⁶ The money deposit business flourished for a season, but ended in disaster. Hastings' losses were not such, however, as to put him out of the running as regards taking advantage of the opportunities then abounding in California.

Hastings continued to make Sacramento his home when his family arrived. The three older children were brought to California, but the youngest, Flora, owing to her delicate health, was left in Iowa with relatives, where she died a year or so later. The first baby girl born to them in California was named Flora (Flora Azalea) after the little girl who had passed away.

*I do swear that I will support
the Constitution of the United States
and the Constitution of the State of
California and that I will faithfully
discharge the duties of the office of
Chief Justice of the Supreme Court
according to the best of my ability*
S. C. Hastings
*Subscribed and sworn
before me this 8th day
of January 1850*
N. H. Binnick
Judge Supreme Court

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That Hastings was well and favorably known when the first Legislature met December 14, 1849, four months after his arrival, is evident from the fact that the vote of the two houses meeting in convention was all but unanimous for him for Chief Justice. He received forty-four of the forty-six votes cast. Horace Hawes received the other two. There was not such unanimity of sentiment, however, with regard to who should be the associate justices.

While Hastings was elected the Chief Justice December 22, 1849, he did not take his oath of office until January 3, 1850. His term was fixed by the Legislature to expire at the end of two years, Lyons' at four years, and Bennett's at six years. Hastings served out his term, which terminated December 31, 1851.

During the two years Hastings was the Chief Justice the Court rendered some hundred and thirty-eight written opinions, of which Hastings wrote thirty-five, Lyons eleven, and Bennett ninety-three. Hastings wrote in addition six dissenting opinions and one concurring one.

The case which created the greatest stir of all while Hastings was a member of the Court was *Woodworth v. Fulton* 1 Cal.295, discussed somewhat fully in the sketch on Bennett. Suffice it to say Hastings' dissent in this case later became the law of the State.

From the treatment which the Supreme Court accorded many of the decisions that came before it for review as judged by the instances where Hastings wrote the opinion for the Court there was ample need for a court of correction, as twenty of his thirty-five opinions involved reversals, and one a modification of the decision below. In only ten instances were the courts below affirmed.

It has been said that Hastings and Lyons devoted a great part of their time while members of the Court to private affairs. This is correct.

As Hastings' term was drawing to a close he did not seek re-election, but sought instead the Attorney Generalship so that he might be the freer to engage in private business. To serve as Attorney General created an ideal situation for Hastings. He was in a key position politically and was at the same time free to address himself to private business.

One of his rulings as Attorney General related to a matter of considerable public interest at the time.

In his annual message of January 5, 1853, Governor Bigler, with a view of increasing the state's revenue, proposed that the water line be extended into the bay at San Francisco six hundred feet beyond the line that had been previously established. A cry of bad faith went up. Hastings ruled that the line could properly be extended, on the ground that while the act of 1851 precluded San Francisco from extending it, it did not forbid the state itself from doing so if it wished. Theodore Hittell refers to this as "a remarkable opinion." In the Legislature, by a very close vote, the proposal failed.

Hastings' term as Attorney General expired on December 31, 1853. While he never held public office again, he nevertheless continued to take some interest in politics for a number of years. When the Know Nothing wave swept over the state, he served as one of the vice presidents of the convention held in Sacramento, August 7, 1855.^{46a}

It was while Hastings was Attorney General that he made his great strides financially. This has led some to suppose the holding of this office was more or less responsible for the handsome fees he is supposed to have taken in at that time. Judicious land investments have also been mentioned as a contributing factor in the accumulating of his wealth. The exact nature of his financial deals has not been discussed to any great extent, except that they related to land and that he prospered while holding the office of Attorney General. The secret of Hastings' rapid financial progress at this time lay largely in his activities relating to Mexican land grants. He sensed from an early date the opportunities abounding in this field and grasped them by the forelock. It was the golden opportunity every lawyer so fondly hopes for, but which comes to only one in ten thousand.

Hastings had the good fortune to become attorney and agent for a number of grant holders. Part of his fees were contingent upon his clients' winning, in which event he received a percentage of the land involved. These grants ran in size from a few square leagues to fifteen, twenty, and even larger amounts. Theodore S. Parvin, one of Hastings' old friends in Iowa, is authority for the statement that Hastings "... received in one case lands valued at a million dollars."⁴⁷ While this may be an extravagant estimate, it nevertheless undoubtedly has some foundation in fact. As relates to the fees taken in by Hastings while in the Attorney General's office, his brother-in-

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Marshall, Hastings' oldest son. Born in Muscatine, Iowa, August 28, 1841. Died June 27, 1875.

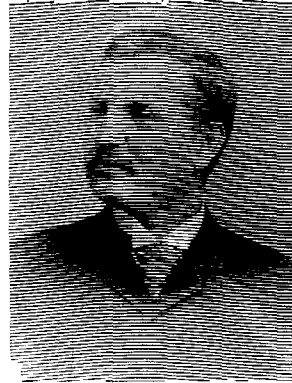


Clara Louise Catherwood Darling, Hastings' oldest daughter. Born in Muscatine March 23, 1845. Died Sept. 14, 1929.

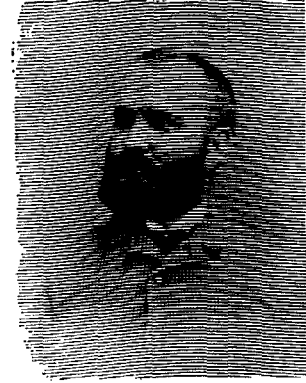
law, Suel Foster, of Muscatine, gave it as his opinion that Hastings did not acquire much property by reason of his position, but stated "that the opportunity came when he acted as agent for parties interested in recovering the large grants of lands made by the Spanish and Mexican governments before California was ceded to the United States."⁴⁸

It should also be added that Hastings was not without some means when he first came to California. "Unlike most of the pioneers of that period," writes his daughter, Clara Louise, "he had come to this section with a comfortable fortune for that day."⁴⁹

Not all of Hastings' time, however, was addressed to land grant litigation and land investments. He engaged somewhat in the regular practice of the law



Charles Foster Dio Hastings. Born in Muscatine, July 3, 1847. Died November 9, 1906.

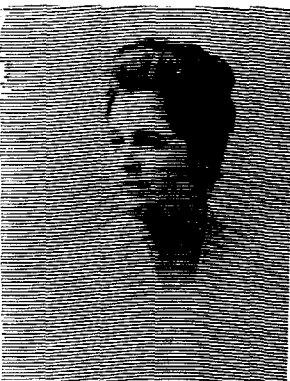


Robert Paul Hastings. Born in Benicia, California, March 27, 1855. Died October 5, 1890.

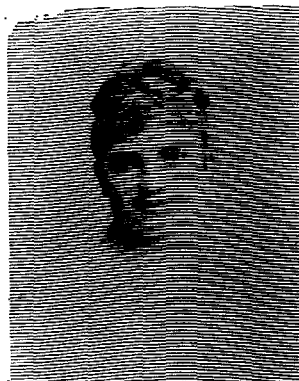
for some years. One notes the name "Hastings" as counsel more or less frequently through the reports of the Supreme Court for a number of years after he left the Court. While there were other lawyers in California by that name, it is nevertheless clear this name refers to him in a number of instances. The name is generally found in association with others, but he also appeared alone at times.

As Hastings' property interests assumed proportions he abandoned the practice. He probably did not practice a great deal after the late fifties. He is set out as a "real estate agent" in the San Francisco directory of 1860.

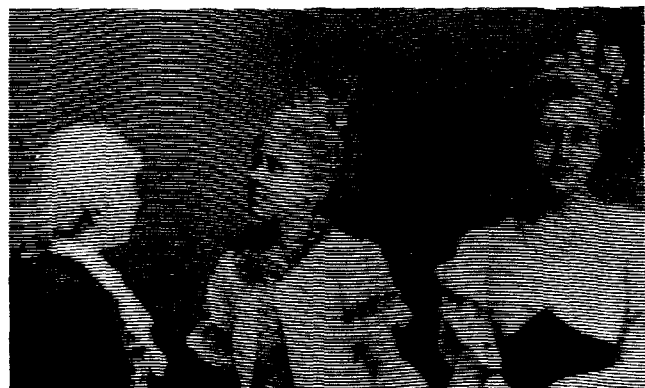
Hastings had some kind of connection with Lloyd Tevis and James B. Haggin, great names in the development of early California, for upwards of about



Ella Hastings, born in Benicia, California, June 24, 1859. Died June 5, 1943.



Lillie Hastings, born in San Francisco, California, January, 1862. Died March 25, 1910.



Three of Hastings' grandchildren, Louise Catherwood (later Mrs. Maud), right; Jennie Catherwood (later Mrs. de Pereyra), middle; Clinton Catherwood. They were children of Hastings' oldest daughter, Clara Louise Catherwood Darling. This picture was taken in Paris.

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sixteen years. While Tevis and Haggin were lawyers, this was not a professional association, but one for business purposes. It is said Hastings parted company with them when they decided to extend their operations to include mining.

Hastings' oldest daughter states Hastings moved his family from Sacramento to Benicia in 1852. It seems clear they moved there earlier than this, however, John Currey speaks of Hastings residing in Benicia when he moved there in 1851.⁵⁰ When Hastings ran for Attorney General in 1851 he was a resident of Benicia. They may have moved there as early as 1850. The immediate occasion for the move was the outbreak of cholera in Sacramento. It is known this disease broke out there in the fall of 1850.

It is said to have been Hastings' intention to move his family to San Francisco. On the way, however, the boat carrying them broke down, and it became necessary to stay over in Benicia until other arrangements could be made. While doing so they stayed with their friend, Dr. William F. Peabody. The people and the community made such a favorable impression on Hastings and his family that they concluded to remain and make it their home. Hastings purchased a large adobe house that had been owned by some native Californians, which he extensively remodeled and made his residence, moving into it about a year after coming to Benicia. They lived in this house until it was destroyed by fire in the summer of 1863.

Hastings was sanguine about Benicia's future and went in heavily for land holdings there. At one time he owned about half of the real estate of the place. This is one time, however, that he guessed wrong. Benicia, failing to become the capital of the state, gradually declined and became a community of minor proportions.

It was in the latter part of July or early August, 1863, that Hastings' home in Benicia was destroyed. The house and contents were completely destroyed. The personal effects included the Hastings' family Bible containing a great deal of valuable family history. The next day Hastings took his entire household to San Francisco to replenish their wardrobes.

A few weeks later Hastings moved to San Francisco, renting a house from a "Mr. Hyde." The Hastings family had resided in Benicia about the same length of time that it had lived in Iowa before coming to California, some twelve years. Four of their chil-

dren were born in Benicia, Douglas, Flora Azalea, Robert Paul, and Ella. Hastings' youngest daughter, Lillie, was born a short time after they came to San Francisco. The home in Benicia had been a very happy one. Hastings' family life probably saw its zenith during the Benicia period and their first five years in San Francisco. Hastings apparently owned at least one home in San Francisco. James A. B. Sherer in his *The Lion of The Vigilantes* speaks of the home William T. Coleman purchased from "rich lawyer S. Clinton Hastings" on Nob Hill and gives a reproduction thereof.⁵¹ This house, located on the southwest corner of Washington and Taylor Streets, was set out in the San Francisco directories of 1870 and 1871 as Hastings' dwelling. As had been the case with his home in Muscatine, and probably the one in Benicia, it commanded a fine view of the surrounding country. After 1871 Hastings and his family lived in hotels a great deal.

In 1864 Hastings acquired about a thousand acres of land at Rutherford, Napa County, where he built a commodious home, which was named Madrone Villa. This was a portion of the George C. Yount grant from the Mexican Government. Madrone Villa, nestling as it did among the native oaks and laurels at the foot of the western hills of Napa Valley, commanding as it did the sweeping view of the valley and mountains surrounding, was a beautiful spot. He also operated a number of other extensive agricultural properties. After he became the owner of the Bank of Lake, at Lakeport, he spent considerable time in Lakeport, but apparently never acquired a home there.

In 1874 Hastings placed practically all of his property into a trust for the benefit of himself and his family. Some family litigation grew out of this.

With his extensive property interests Hastings became a party to sundry controversies relating to property matters. An examination of the California Supreme Court reports reveals him as one of the litigating parties in more actions than is ordinarily the lot of one man. One notes the final judgment often went against him. He probably lost more times than he prevailed. Some of these cases were somewhat hard fought, and sometimes involved new and nice points of law. Undoubtedly more law was made in the decisions where he was one of the litigating parties than was made in all the cases where he wrote the opinion for the Court as Chief Justice of California. About

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a dozen different justices of the Supreme Court, from Field in the fifties to Sharpstein and Myrick in the eighties, rendered opinions involving his controversies.

One of Hastings' most outstanding qualities was his love of travel. Not much is heard of him traveling a great deal, although he did some, before he made his fortune, but thereafter he traveled a great deal, both locally and abroad. These travels were not without a marked influence upon his life. The individual members of his family also traveled extensively.

In 1864-1865 he made an extensive trip to Europe, leaving San Francisco in November, 1864, going by way of Panama and New York. He had made a trip to Europe some years before this, and while the details may not be known, it must have been a very interesting one. On the 1864-1865 trip he took his entire family along as far as New York, where Dio and Robert were placed in a Catholic school in Manhattanville. While in New York his family stayed at the Metropolitan Hotel on Broadway. Collis P. Huntington's family was staying there at the time. These families were socially close.

Hastings went to Washington on this trip, where he had "a law suit before the Supreme Court. . .," according to his daughter, Clara Louise, whom he took along with him. In Washington he stayed at the Willard Hotel, where Stephen J. Field and his wife were apparently living at that time. Hastings asked Mrs. Field if she would take his daughter "under her wing" while they remained in Washington, but she begged to be excused, remarking that it was "so difficult to chaperone girls their first winter," and that she never did it. Clara Louise formed an unfavorable impression of Mrs. Field. Clara Louise mentions Hastings meeting many acquaintances in Washington, including Lincoln, then President of the United States. As they met, Lincoln remarked, "Well, Clinton—never expected to shake hands with me as President of the United States, did you?" Discussing the occasion further, Hastings' daughter mentions how the President gave his "big hand to her," saying as he did so, "well, I hear you are a millionaire in California, Clint, and hope you will be happy with lots of girls like this about you." One of the things that greatly impressed Hastings' daughter was Lincoln's kindly face.⁵²

Hastings got off to Europe in January, 1865, taking Clara Louise and Douglas, then a small boy,

along. Douglas was to be placed under the care of a top physician in England with a view of curing him of an affliction from which he was suffering.

Hastings and his daughter then toured the continent. At Dresden Hastings' oldest son Marshall came from Freiburg, where he was studying mining, and joined them. "I always loved Marshall devotedly and at this time of his life he was handsome, witty, and everything a loving sister could desire."⁵³

Sending his son to a mining school was about as close as Hastings got to the mining game. It was the mining activities incident to the discovery of the Comstock Lode that had inspired Hastings to have this son educated in this branch. Marshall returned to San Francisco sometime later where he opened an office as a mining engineer.

Mrs. Hastings and their sons Dio and Robert and their baby, Lillie, joined Hastings and the children that had come with him in London the latter part of June. His girls Flora and Ella had been left at the Sacred Heart Convent in Manhattanville, New York. When they returned to America in August Dio and Robert were left in England with Douglas, in a private school at Hampstead. All four of his boys were therefore in Europe receiving their education at one time, the three younger boys in England and Marshall at Freiburg.

In January, 1866, Hastings made another trip to Europe, again taking his oldest daughter along. She gave the purpose of this trip to break up the romance which had started between her and Colonel E. C. Catherwood. The engagement was broken, but later a new romance developed, followed by their marriage in San Francisco in 1869. The wedding was one of the brilliant social affairs in San Francisco that year.

They reached Paris the latter part of March, and shortly thereafter his daughter was entered at "Madam Grenfell's fashionable school."

Clara Louise's school broke up for the season in July and in August she accompanied her father on a tour through the northern countries of Europe. Hastings apparently returned to America, although it is not clear just when that was. He may have spent a part of 1867 in Europe.

Hastings' family liked Europe and Mrs. Hastings and various members of the family spent a great deal of their time there until Mrs. Hastings' death. The

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younger children, as well as the older, received a great part of their education there. One of Hastings' granddaughters married a nobleman.⁵⁴ Mrs. Hastings died in Pau, France, February 3, 1876. Hastings was in California at the time. Her remains were brought to California and interred in the family plot at St. Helena.

Speaking of Hastings' family in 1861 William Henry Brewer of Yale wrote: "He has a pretty wife and several children; some of the latter very pretty, others not." That was before Hastings' youngest child by his first wife, Lillie, was born. Marshall, his oldest child, was then about twenty, and Ella, his then youngest, about two years old. Lillie, the baby, perhaps the prettiest of them all, was born the following year.⁵⁵

In 1869 Hastings took an interesting trip with William H. Seward to Alaska. It is said he was invited to join the party by reason of his experience in frontier life and familiarity with the habits and ways of the Western Indians. Out of the associations of this trip there grew up a warm friendship between Seward and Hastings, which, it has been observed, was the more remarkable considering the wide differences in the views of these two men on many subjects, including politics and religion. Seward visited San Francisco again in September the following year, 1870, while on his way around the world. Upon reaching Sacramento he was given a public reception, but to avoid the appearance of seeking a renewal of the hospitalities which had been extended so generously to him while in San Francisco the year before, he effected a quiet entrance into San Francisco, where, to use the words of his own record-keeper, he became the guest "of his old friend and travelling companion, Mr. Hastings."⁵⁶

Many things Hastings did evince his interest in the things of the intellect. He had a hand in the attempt that was made by the Iowa territorial legislature to establish a territorial library. While the Legislature and the Governor could not agree at this session, a law for the establishment of a library was passed at the next session.⁵⁷ Hastings became one of the frequent borrowers of books therefrom.⁵⁸ One of his first educational enterprises after coming to California was to have St. Catherine's convent school brought to Benicia. He donated the land for its buildings and grounds.

He was a life member of the California Academy of Sciences, and the world is in a great degree indebted to him for the publication of the State Geological Survey of the Botany of California in two volumes, in 1876 and 1880.

Hastings was the twenty-third president of The Society of California Pioneers. In 1871 he made a trip to Mexico City, and upon his return gave a report thereof in the form of a paper, which he read to the society.⁵⁹ A substantial portion thereof was devoted to the prehistoric and ancient peoples that inhabited Mexico. He mentioned the northern part of Mexico as a healthful place to live, but did not recommend young men going there as conditions were then. "I . . . would suggest that it would not be wise at the present time to go yourself," he observed, "but send your wife's relations."

While the foregoing would be sufficient to establish him as a patron of learning, the act which distinguishes him most in this field is the founding of Hastings College of the Law.

HASTINGS COLLEGE OF THE LAW

This college shall stand as long as government and civilized society shall stand.

[Hastings]

Without doubt, Hastings' greatest single contribution to the State of California, and the one thing which has brought to his name the greatest distinction, was the founding of the law school which bears his name. He gave many years of earnest thought and consideration to this project. "I do this as a result of investigation for years," he observed at the time the founding was officially announced. Into it he put his whole heart and soul. In it, he felt he was erecting the most lasting and enduring monument that he could raise to his name, "a monument," to use his own words, "not of granite, wood or marble, not a house made with hands, but a temple of law and intellect." That he expected much from his munificence is apparent from his own statements.

This event was foreshadowed in March, 1877, when there appeared an announcement in one of the papers at the University of California that Hastings was about to found a law school to become a part of the university.⁶⁰

The proposal was calculated to meet a real need, as there was at that time no law school in the West. The report was officially confirmed on February 13, 1878,

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when the Governor received a letter from him, outlining his proposals.⁶¹ The Legislature immediately passed the act creating "Hastings College of the Law."⁶² Under it Hastings was to pay in to the state treasurer of California one hundred thousand dollars, to constitute a perpetual annuity for the support and maintenance of the college. The officers were to consist of a dean, a registrar, and eight directors, to serve without compensation, to be presided over by the Chief Justice of the Supreme Court of California. Vacancies in the board were to be filled from members of the bar association of the City of San Francisco, and the board was "always" to include "some heir or some representative of said S. C. Hastings."

The formal announcement of the college constituted an important part of the commencement exercises of the University of California held June 5, 1878. Hastings himself was present and made an address outlining the considerations that had prompted him to found the college and the place which it was intended to fill in the community. His remarks upon this occasion are of great interest, in that they throw much light upon the aims and objects he had had in mind in founding the college.

"The desire of the founder," he said "is to diffuse a knowledge of the great principles of jurisprudence, not only among those who propose to devote themselves to the noble profession of the law, but also among all classes of society; to elevate the general standing of the Bar, and to maintain and perpetuate the purity and dignity of the Bench; for, without this, civilized government cannot exist; the rights of property, life and liberty will vanish and become an exploded theory of the past, and communism, mobs and other disorders will prevail against law, order and good government."

Summarizing the several considerations that had prompted him to found the college, he closed with the words: "There are still others, but they are not secular, and must be submitted to another forum."⁶³

In behalf of the board of directors. Thomas B. Bishop, a prominent lawyer of San Francisco, made a response. His remarks indicate that he too held great expectations for the new law school.

Joseph B. Crockett of the Supreme Court of California also spoke. His speech breathed the same prophetic strain that found expression in the addresses of Hastings and Mr. Bishop.

The response his munificence received must have been very gratifying to Hastings. The *San Francisco Daily Bulletin* of June 5, 1878, spoke editorially of the college's founding as "one of the notable events of the year." "It is not often," it went on to say, "that a wealthy man in this country comes to the front with a hundred thousand dollars to endow a department of learning."

One of the first acts of the directors of the college was to appoint Hastings the dean and his son C. F. Dio the registrar. John Norton Pomeroy, a deep and distinguished scholar of the law, was appointed the first professor, with the title of Professor of Municipal Law. His connection at once gave the college standing and prestige throughout the country. After a period, Hastings resigned as the dean, whereupon he accepted the honorary position of Professor of Comparative Jurisprudence. As such he delivered an interesting address November 10, 1880, to the general assembly of the students of the University of California.⁶⁴ In it he paid glowing tribute to the Roman law and lawyers when this system was operating at its best. He also thundered forth some vigorous language with regard to the lawyers of his own time. "How to get rid of these phylloxera, these pestiferous *insectivora* of the law, commonly known as shysters, is the question. Can we destroy them, these swarms, at the present time so prolific?" may be taken as an example.

The college was formally opened and inaugurated on Thursday, August 9, 1878. The inaugural address was given by John Norton Pomeroy. The hall was crowded with students, judges, and members of the bar. It represented the flower of California's legal talent. Anticipation for the school's future and importance ran high. Among those present were Hastings, John Le Conte, the president of the University of California, and the justices of the Supreme Court of California.

Pomeroy's address is not only interesting in a high degree, but fit in nicely with what Hastings said at the time the college was formally announced at Berkeley, and indicates that he, as the professor who would be in charge of the instruction in the college, had caught the full vision of the founder in aiming to make this one of the distinguished and outstanding law schools of the entire land.

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"Of all the departments of knowledge," he said, "and of all the spheres of action which have reference to the mortal life alone, none is so vast, so important, and so practical as the law."

He closed his address with the words "And, in conclusion, I do reverently ask the blessing of Almighty God the Father, the Son, and the Holy Ghost upon this institution, and upon the work which is this day commenced."⁶⁵

To date approximately thirty-three hundred persons have taken their degree from Hastings College of the Law.⁶⁶

In looking back upon the college several things enlist admiration. The first board of directors was an exceptionally strong group of men.

Through the years a high percentage of the students have been graduates of prominent colleges and universities before entering the college. In this respect it has always been for all intents and purposes a graduate school.

As time went by Hastings came to feel that the administration of the college should be under the direction of the regents of the university. At his instigation the Legislature in 1883 and 1885 passed acts purporting to put the college under the jurisdiction of the board of regents of the university. In 1886 these acts were declared unconstitutional, and the administration has continued as originally provided.⁶⁷ For many years the college was somewhat of an orphan without facilities of its own for carrying on its work, but in March, 1953, a fine building in San Francisco costing a million and a half, adequate for its growing needs, was dedicated. There was a time when it was spoken of as something "highly anomalous"⁶⁸ in the field of legal education. Today, however, it is rated one of the best law schools in the nation.^{68a}

FROM THE TIME OF HASTINGS' REMARRIAGE TO THE TIME OF HIS DEATH

Hastings remained unmarried for something like nine years after his wife's death, when on March 25, 1885, he startled the world by bringing to the chambers of Judge John F. Finn of the superior court in San Francisco a beautiful young lady by the name of Lillian Knust and asking him to marry them. Hastings was seventy. His bride was twenty, a couple of years younger than his youngest child. She was the daughter of Mr. and Mrs. Charles Knust of Ukiah.

Her father had come to California from Hanover in 1852. Here he had met and married Sarah Dunn, late of Tennessee, in Downieville. Hastings met Lillian Knust through her brother August, foreman of his Lake County properties and an expert vineyardist and wine maker. Hastings contributed to her education for some time before they were married. Their only child, born September 2, 1886, dying at birth, was given Hastings' name.

Hastings lived at Rutherford and Lakeport a great deal from this time on.

After a little while discord developed between Hastings and his young wife, leading to separation and divorce. Four months after they were divorced they became reconciled and were again married, and were living together at the time Hastings passed away. The fact, however, that Hastings left his second wife relatively little would indicate their troubles had made a difference. Her greatest complaint was the way he "matronized" her, that is, kept her in the constant company of an older woman, or women.

The second Mrs. Hastings, after Hastings' death, married Dr. Albert Pearson Woodward, February 6, 1897. They were married by Augustus L. Rhodes. Mrs. Woodward died February 3, 1948.

It was when Hastings married the second time that he was threatened with suit by Mary Keller, who claimed she and Hastings had entered into a contract of marriage with each other and that she was legally his wife. The romance is alleged to have arisen while she was nursing him through a sickness. Hastings brought suit in Lake County to have her claim declared spurious.⁶⁹ The matter was eventually settled out of court.

Hastings' son Robert ran for Congress on the Democratic ticket in 1885, losing by a narrow margin to W. W. Morrow, who later made an honored name for himself on the federal bench in California. Robert was only thirty. He was only thirty-five when he passed away. He left a wife and two children.

Hastings died in San Francisco, February 18, 1893. The funeral was conducted at St. Ignatius Church. It was to have been held at old St. Mary's, where he attended a great deal, and near which he lived for many years, but another funeral prevented. A large number of prominent members of the bench and bar were present. The pallbearers included Chief Justice

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Beatty,⁷⁰ John Currey, and E. W. McKinstry, former members of the Court, and Joseph McKenna, at that time a United States circuit court judge and later a member of the Supreme Court of the United States.

The Reverend Father Sasia paid high tribute to the trust and abiding faith manifested by the deceased during his last sickness. Even before he had called in a physician to minister relief to his afflicted body, reported Father Sasia, he had called in the representatives of Providence on earth to minister to him spiritually. "I remember his last words well," he said. "God all mighty has blessed me on earth, but his greatest blessing is that of being able to prepare for death, and I would be ungrateful not to avail myself of it."⁷¹ Despite such comfort as his religion brought him, however, Hastings nevertheless did not particularly welcome death. As the end was approaching someone came into the room and inquired how he was. Upon his son Dio remarking, "Father will soon be shoveling coal now," Hastings groaned apprehensively.

His remains were taken to St. Helena for interment, where they now rest side by side with those of his first wife and other members of his family.

Hastings' large and powerful physique and physical endurance has already been referred to. As a young lawyer in Iowa he was spoken of as "very tall and as straight as a bean pole."⁷² His hair and skin were dark. While it has been said that he had an "expressionless countenance,"⁷³ it is probably more correct, as Suel Foster, Hastings' brother-in-law put it, that no man ever lived in Iowa "with a more expressive countenance."⁷⁴ His voice, while strong, was not unduly so, and not unpleasing. He liked music and in his younger days not infrequently amused his children by playing the violin while they danced. He also played some familiar airs on the flute such as "Auld Lang Syne," etc. Also a few melodies of the same order on the piano.⁷⁵ While not an orator, he nevertheless spoke well when occasion called for his view. Though without a great deal of formal education, he was nevertheless intellectual in his tastes. Apparently there was in him a strain of the superstitious, as he is said to have believed in ghosts. He dreaded burglars and robbers. This he no doubt came by naturally, being a man of property. He liked to mingle in fashionable society, and was especially fond of banquets and such gatherings as brought men of

influence and beautiful ladies together. One of his greatest gifts is said to have been his power of persuasion in man-to-man discussions. In politics he was a Democrat the greater part of the time. There is reported to have been a dash of Indian blood in his veins, inherited from some of his early American ancestors.⁷⁶

In Iowa Hastings is reported to have been a Methodist;⁷⁷ also a high Mason.⁷⁸ From the fact that he was active in Catholic circles in California from an early date it would appear his conversion took place about the time he arrived. His daughter, Clara Louise, born in 1845, writing of her childhood in Benicia, states it was here her father "induced the Dominican nuns to establish their convent," and "as a child five years old became their first pupil." St. Catherine's convent school was established in Benicia in August, 1854. It may be that the Dominicans carried on some educational activities in Benicia before the academy was moved there, however. There is a tradition among Hastings' descendants that he was converted while on a trip abroad as a result of a discussion he had in the Latin tongue with some cardinals, and that he immediately returned and had all of his children baptized into this church. "Judge Hastings," wrote William H. Brewer, referring to his visit with him in 1861, "is a convert of the Roman church; his wife is a leading Presbyterian here. He, like all proselytes, is very zealous, is probably the most influential man in that church here. He had traveled abroad, and gave us a most interesting description of his presentation to the Pope."^{78a} While the first Mrs. Hastings may not have become a Catholic, his second wife did.

That Hastings had an unusually fine sense of humor there can be no doubt. One notes references to it in the biographical literature of Iowa for the period he lived there.⁷⁹ One finds frequent traces of it in California. Oscar T. Shuck, who knew him well, rated him one of the wittiest men he had met. "Judge Hastings' conversation is charged with wit and pleasantry," he wrote. "His humor was perennial . . . He has said more good things than did Judge Baldwin, although his pleasantries are on the whole below Baldwin's standard and will have shorter life."⁸⁰ To have given him this rating places him in a class of the best. Not only was he possessed of considerable animal spirits himself, but his disposition along this line invited others to take liberties to their merriment. One or two instances may be mentioned.

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Once when he and his young wife were sojourning in Portland, Stephen J. Field happened to be there too holding court. It seems they were staying at the same hotel. As they were chatting on one occasion, Field remarked to Hastings that he was going to marry his young wife as soon as he, Hastings, should die, to which Hastings replied that he was welcome to do that, if *she would have him!*

Sometime after his marriage the second time, Hastings confided to his son Robert that his wife was going to have a baby. With an expression of surprise Robert asked, "and Father, whom do you suspect?" There is reason to believe Hastings evened the score with his pert son more than once. An anecdote told by Samuel M. Shortridge would do it if he had no other to his credit. When Shortridge went to Rutherford about 1878 to teach, Hastings at once looked him up and took him to his house, Madrone Villa, and did what he could to make him feel at home. Out a little way from his residence Hastings had a little building which he used for his library. He took Shortridge into it and showed him his books, gave him a key, and invited him to use the books as much as he wished. As they were chatting in the library, Hastings pointed to some foils and a set of boxing gloves hanging on one of the walls, and with an offhand chuckle remarked that that was about all that Bob brought back with him from Harvard.

While Hastings had been more or less a drinker all his life, there was at least one time when he somewhat strongly espoused the cause of temperance. In fact, it seems a little amusing that he and Hugh C. Murray should be working hand in hand with the temperance parties at the time Murray was running for Chief Justice in 1855, with Murray receiving the indorsement of one of them, drink being Murray's greatest enemy, and the one thing above all else that brought his brilliant career to its premature end.⁸¹

Hastings smoked a pipe, cigars, and cigarettes rolled by himself, although he did not approve cigarette smoking, and therefore was somewhat reluctant about smoking them in public places, regarding it as a poor example for the younger men.

It was not uncommon in later years for him to come to the directors' room in the back of his bank in Lakeport, and there read by the hour. As matters relating to business would come to his mind he would call Mr. Green⁸² and make such inquiries as he

wished. When he had got such information as he desired, he would simply start reading again. In his conversation he frequently referred to the things he had read.

CONCLUSION

While Hastings was not without the frailties common to all flesh, there is, nevertheless, sufficient that is distinctive and outstanding about his life and career to entitle him to a high place in the estimation of mankind. His greatness lay in his free and adventurous spirit, strong will, and aggressiveness. He was not unduly trammelled as many men are with an undue sense of the importance of the place and status in which they happen to find themselves at birth and as they grow up. His scent was keen and true in singling out the spots where opportunity flourished. This swept him on from one place to another, also from one interest and even occupation to another.

As a lawyer, Hastings' learning was that of the many. By no stretch of the imagination could he be placed in the class of men like Hall McAllister, Stephen J. Field, Joseph G. Baldwin, Solomon Heydenfeldt, and others, his contemporaries in California.⁸³ These men, however, belong in the higher brackets as lawyers, and after all, the bulk of the law work is done by the average lawyer. Comparing Hastings with the average run of lawyers, it is quite true, as has been said of him by those accustomed to be discriminating, that he was "a lawyer of exceptional experience, force and ability."⁸⁴ He did win for himself, particularly in Iowa, in its pioneer days, a solid reputation as a lawyer, commanding a high place at its frontier bar, as the record amply bears out.

He was a true patron of learning.

As a business man he had few superiors. He went in for big stakes and made some good winnings.

He loved his family and was proud of them to a marked degree. Possibly he spoiled them a little, too.

His second marriage had its ups and downs, and it may well be questioned if it was the success it might have been. Hastings no doubt loved his young companion. She gave that as her conviction after the years, and admired him despite their difficulties.⁸⁵

Perhaps this sketch cannot be concluded in better and more appropriate language than that used by Dean McMurray when he spoke of Hastings as "a great pioneer and builder of commonwealths, a son

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of an heroic era in American history, a massive figure, abounding in vitality, courage and imagination," entitled to "a larger meed of remembrance than has been his share."⁸⁶ What has been noted sustains this tribute and justifies the esteem men may always bear the memory of the man who will always have the honor and distinction of being California's first Chief Justice.

FOOTNOTES

1. Pamphlet entitled, "Hastings College of the Law. Address of S. Clinton Hastings, from chair of Comparative Jurisprudence. General assembly of the students of the University of California, November 10th, 1880. San Francisco: Bacon & Company, Printers, 1879." The writer consulted the copy in the California State Library at Sacramento.
- 1a. Edgar C. Emerson, *A Descriptive Work on Jefferson County, N. Y.* (The Boston History Co., 1898), pp. 846-847.
2. *Ibid.*
3. Shuck, *Representative Men of the Pacific* (1870), p. 433.
4. There are a few copies of the *Indiana Signal* in the Indiana State Library at Indianapolis.
5. *History of Dearborn, Ohio and Switzerland Counties, Indiana* (Weakley, Harraman & Co., 1885), p. 182.
6. Phelps, *Contemporary Biography of California's Representative Men*, Vol. I, p. 170.
7. Letter from the office of the Secretary of State of Indiana to writer, dated June 6, 1932.
8. Benjamin F. Gue, *History of Iowa* (1903), Vol. I, p. 173.
9. *Ibid.*
10. Phelps, *op. cit.*, Vol. I, p. 170. In *Annals of Iowa*, Series 3, 1 (1893), 79, Hastings is reported to have been one of the sixteen lawyers admitted to practice in the Supreme Court of Iowa at its first term in 1838. This is not necessarily inconsistent with his having been admitted to the bar as above set out the year before, as it was a common practice at that time for lawyers to be admitted to the circuit courts first, and after a few years to be admitted to practice in the Supreme Court.
11. *S. F. Chronicle* (Feb. 19, 1893), 24.
12. Shuck, *Bench and Bar of California* (1888), Part II, p. 241.
13. *Iowa Historical Record* (Jan., 1900), 73-74.
14. Clara Louise Hastings Darling, *Memoirs*, Manuscript, in possession of Louise C. Maud, daughter, Palo Alto, California. Hereafter referred to as Darling manuscript.
15. *Annals of Iowa*, Series 3, 7 (1905), 363.
16. Johnson Brigham, *Iowa, Its History and Its Foremost Citizens* (S. J. Clarke Pub. Co., 1915), p. 156.
17. *Annals of Iowa* (1871), 708.
18. *Annals of Iowa* (1872), 22-23.
19. *Muscatine Journal*, Centennial Edition (May 31, 1940), 9.
20. *Annals of Iowa* (1871), 711-712.
21. Speaking of this article by Taylor, Edward H. Stiles states it "does Hastings great injustice"; that it "in fact, outrageously misrepresents him." *Recollections and Sketches of Notable Lawyers and Public Men of Early Iowa* (The Homestead Pub. Co., 1916), p. 116.
22. Shuck, *History of the Bench and Bar of California* (1901), p. 455.
23. Gue, *op. cit.*, Vol. I, p. 179.
24. *Ibid.*, p. 188.
25. *Ibid.*
26. *Annals of Iowa*, Series 3, 4 (1889-1901), 622.
27. *Ibid.*
28. *Iowa Journal of History and Politics*, Vol. XVII (1919), 234.
29. Charles Negus, *Annals of Iowa*, Vols. III, IV, V (1865-1867), 747.
30. Shuck, *Representative Men of the Pacific* (1870), pp. 435, 436. *Annals of Iowa*, Vols. III, IV, V (1865-1867), 447.
31. *Annals of Iowa*, Vol. VIII (1870), 284.
- 31a. *Missouri v. Iowa* 7 Howard 660; 10 Howard 1.
32. Cleland, *History of California* (1922), pp. 252-253. "As a matter of history it is well known that this constitution was in many respects copied from that of Iowa, and New York." 5 Cal. Jur. 549.
33. Gue, *op. cit.*, Vol. I, p. 229.
34. Phelps, *op. cit.*, Vol. I, p. 171.
35. Darling manuscript.
36. Shuck, *Representative Men of the Pacific*; Phelps, *op. cit.*, Vol. I, p. 171; *S. F. Call* (Feb. 19, 1893), 6, col. 4.
37. *Iowa Journal of History and Politics*, Vol. X (1912), 494-495.
38. Darling manuscript.
39. August 18, 1849, is the date accepted by the Society of California Pioneers, and there is now in the Hastings family a certificate by the society so certifying.
40. Gue, *op. cit.*, Vol. I, pp. 260-261.
41. Darling manuscript.
42. Interview with Annie Cope, daughter of Judge Cope, 1937.
43. Interview with the writer.
44. Louise C. Maud, 1938.
45. Orrin K. McMurray, *Hastings College of the Law Golden Jubilee Book, 1878-1928*, p. 8.
46. Davis, *Political Conventions in California*, p. 4.
- 46a. *Ibid.*, p. 42.
47. Edward H. Stiles, *Recollections and Sketches*, *op. cit.*, p. 118.
48. Irving B. Richman, *History of Muscatine County, Iowa* (S. J. Clarke Co., 1911), pp. 369-370.
49. Darling manuscript.
50. Unpublished manuscript, "History of Solano County," in possession of Laura Currey Sargent, Dixon, California.
51. Pp. 261-262.

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52. Darling manuscript.
53. *Ibid.*
54. His daughter, Flora Azalea's daughter, Azalea Caroline Keyes, married Falkenstein Lewenhaupt.
55. *Up and Down California in 1860-1864* (Yale University Press, 1930), p. 215.
56. *W. H. Seward's Travels Around World* (1870), p. 26.
57. *Annals of Iowa*, Vol. X (1911-1913), 494-498.
58. *Annals of Iowa*, Series 3, 2 (1895-1897), 638.
59. *Daily Record-Union* (Sacramento, April 19, 1879).
60. Slack, *Green Bag* (1889), Vol. I, p. 518.
61. The Governor was William Irwin. The letter was directed to him and the Legislature.
62. Statutes of California, 1877-1878, p. 533. According to Charles W. Slack, this act was drafted by Hastings himself. *Green Bag*, Vol. I, p. 518. Chief Justice Waste in *Hastings College of the Law Golden Jubilee Book, 1878-1928*, p. 13, states that the act is "said to have been prepared by Judge (William T.) Wallace."
63. Hastings' address was printed in full in *S. F. Daily Evening Bulletin* of June 5, 1878. Also in pamphlet form by Edward Bosqui & Co., Printer, 1878, S. F., a copy of which may be found in the California State Library at Sacramento. The latter also contains the addresses of Thomas B. Bishop and Joseph B. Crockett on the same occasion.
64. This address was printed by Bacon & Company, S. F., at the time, and is contained in a pamphlet now in the California State Library at Sacramento, entitled "Hastings College of the Law. Address of S. Clinton Hastings, from Chair of Comparative Jurisprudence, to General Assembly of the Students of the University of California, November 10th, 1880."
65. Pomeroy's address as it was reported at the time in the *Daily Evening S. F. Bulletin* of Aug. 9, 1878.
66. Up to and including 1961.
67. *People ex rel. S. C. Hastings v. Kewen* 69 Cal. 215.
68. Carnegie Foundation for Advancement of Teaching bulletin entitled "Present Day Law Schools in the United States."
- 68a. "Dean Emeritus Roscoe Pound . . . called the Hastings staff probably the strongest law faculty ever assembled." *Oakland Tribune*, July 11, 1963, p. 1.
69. *Hastings v. Mary Keller* 69 Cal. 606.
70. Beatty was the fifteenth Chief Justice. Forty-two men had come to the Court since Hastings' appointment in 1849. It will therefore be noted much had happened since Hastings became the first Chief Justice.
71. *S. F. Chronicle* (Feb. 22, 1893), 5.
72. *Annals of Iowa*, Vol. IX (1871), 708.
73. *Ibid.*
74. *Annals of Iowa* (January, 1872), 22-23.
75. Darling manuscript.
76. Hastings' second wife, and Leon Enemark, trustee of the Hastings trust, advised the writer they so understood.
77. Hawkins Taylor, *Annals of Iowa*, already quoted, 712.
78. Interview with Louise Maud.
- 78a. *Up and Down California in 1860-1864*, *op. cit.*, p. 214.
79. "Much could be said about Judge Hastings,—his commanding appearance, ready resources, and sly humor, . . ." *Iowa Historical Record*, 16-18 (1900-1902), 74, may be taken as illustrative.
80. Shuck, *Bench and Bar in California*, Part II, p. 247.
81. *Daily Alta California* (Sept. 4, 1853), 2, cols. 2-3.
82. Willis Green.
83. Speaking of the early day judges of the Supreme Court of California in a letter to John Norton Pomeroy dated June 21, 1881, Stephen J. Field, speaking of Hastings, wrote: "Hastings you know, and he was never regarded as a shining light." William Draper Lewis, *Great American Lawyers*, Vol. VII, p. 34.
84. W. W. Morrow, "Introduction," *California Jurisprudence*, Vol. I, p. x1.
85. The writer had an interview with her in 1935.
86. *Hastings College of the Law Golden Jubilee Book*, *op. cit.*

HENRY A. LYONS

Second Justice, December 26, 1849-January 1, 1852
Second Chief Justice, January 1, 1852-March 31, 1852



Henry A. Lyons

About the only distinguishing feature relating to Henry A. Lyons' legal career in California is the fact that he was one of the first three men to come to its Supreme Court. As a practicing lawyer here there is scarcely a trace. His work on the Court was of a role so minor as to justify little notice. To form a fair appraisal of his life it is necessary to go back to Louisiana where he came from and follow through in California on the foundations laid there. This brings to the front his interesting family life and high social standing. These, with the success he made in business and the fortune he left, place him in the category of one of the most interesting men who have served on the Court. This side of his life will therefore make up for the space that might otherwise have been taken in reviewing his legal accomplishments.

His life has in it valuable lessons for anyone contemplating it. It will be the purpose of this sketch to present his career so far as known without pointing any moral, leaving the reader to do his own evaluating. This much is set out at the start for the benefit of those who otherwise naturally might ask, why so

much of items aside from the law and so little on the latter? Apparently Lyons came to California more for the purpose of rounding out a fortune than exploring law to its depths or to have a hand in perfecting institutions.

Lyons was born in Philadelphia October 5, 1809,¹ and was the son of Solomon and Sarah (also known as Rebecca) Lyons. While Solomon Lyons came to this country from Frankfurt-on-the-Main, he was nevertheless of French extraction and background. They had five sons, Benjamin, Moses, Zeligman Selwin, Henry Augustus, and Samuel, and one daughter, Rachel. Zeligman Selwin became a lawyer and moved from Baltimore to Louisiana about 1834, settling in Jackson, where he achieved considerable success. He encouraged his brothers to come too and pursuant thereto at least two of them, Benjamin and the subject of this sketch, came, Benjamin settling in Clinton and Lyons in St. Francisville. There is a tradition to the effect that one or more of them came South on horseback. As Lyons was at this time about twenty-five it may well be that he had prepared for the bar before coming to Louisiana. As his brother Benjamin settled in Clinton, and the fact that it seems to have been somewhat of a law town, he may have started out in either Jackson or Clinton. Be this as it may, it was in St. Francisville, the county seat of West Feliciana Parish, that he consolidated his position both at the bar and otherwise.

That Lyons enjoyed a first position socially is vouchsafed by his marriage to Eliza Pirrie. Much is known of her early life by reason of the part she and her family and girlhood home played in the career of John James Audubon, the great bird painter, whom the Pirries met in the French quarter of New Orleans. Oakley plantation, the Pirrie home, located some five miles from St. Francisville, was one of the greatest bird paradises Audubon ever discovered. At least a fourth of his greatest bird paintings were produced in this locality. It was his coming in contact with the Pirrie family that marked the turning point of his career from one of a severe struggle to high success. It was then Audubon's "beautiful Miss Pirrie of Oakley," a girl of fifteen, came into his life. It was a congenial teacher-student relationship. Biographical literature relating to Audubon makes more or less extended reference to Oakley and the Pirries.² Audubon painted a portrait of Eliza Pirrie which is still in the possession of her descendants.

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Lyons married Eliza Pirrie in 1840. She was then about thirty-five and Lyons thirty-one. She had been twice a widow. Her first husband, Robert Hilliard Barrow, a cousin, had died a few weeks after their romantic elopement in 1823.³ By him she had one child, Robert Hilliard, Jr., born after his father's death. On Christmas Eve, 1828, she married William Robert Bowman, a young clergyman from Brownsville, Pennsylvania. He built and became the first rector of Grace Episcopal Church at St. Francisville, "the second Protestant church in Louisiana."⁴ By him she had two children, Isabelle (Mrs. William Mathews) and James Pirrie Bowman. Reverend Bowman died in 1837.

Eliza Bowman was possessed of considerable property at the time she married Lyons. She had inherited Oakley Plantation from her parents and a nearby plantation from her last husband, from whose parents he had inherited considerable property.

Upon marrying Eliza Pirrie Barrow Bowman, Lyons made Oakley his home. His three daughters, Lucy Pirrie, Cora Augusta, and Eliza were born there. As Lucy and Cora grew up (Eliza passed away in childhood) they were afforded the finest educational opportunities available locally as well as in Europe. They were students together for a period in Paris. While Lyons, his daughters, and nephew Thomas Barton Lyons (son of Zaligman Selwin), all appear to have been in Paris in 1858, Lyons apparently spent a substantial portion of this trip in Italy. It is reported that he procured in Rome a palace and that "they enjoyed a very gay social season" there.⁵ Lyons' brother Zaligman Selwin passing away in 1852, Lyons had assumed the education of his son Thomas Barton. He entered the Sorbonne in 1857 or 1858, where he remained until 1861 when he returned to enter the Confederate Army. Dyed-in-the-wool Southerner as Lyons became, he did not approve this move on the part of his nephew. Thomas Barton Lyons became a more than usually successful lawyer in Clinton, Louisiana. Later he moved to Birmingham, Alabama, and still later to Charlottesville, Virginia, where he died. Lyons remembered him in his will.

Comfortably situated as Lyons was at the time gold was discovered in California, and much as he was needed by his family, he nevertheless could not disregard the urge to go there. He left his family in Louisiana and came by way of the Isthmus and

settled in the Sonora area. This was in the San Joaquin district, as the political subdivisions of California were at first divided. It was a considerable Southern stronghold. Anderson and Terry, later justices, commenced their careers in California in this area.

Lyons brought with him ten to fifteen years of legal experience. That he addressed himself to the law sufficiently, though only briefly, to impress himself upon the new community as a first lawyer may be inferred from the fact that he received first consideration for a place on the Supreme Court after the Legislature's election of Hastings as Chief Justice. Lyons received twenty-four votes against fifteen for Nathaniel Bennett and seven for Kimball H. Dimmick. He had run for the Legislature in the election of 1849, but had been defeated for the position.

Hastings drew a two-year term, Lyons a four-year one, and Bennett a six-year term. These men constituted the Court's personnel until Bennett resigned in 1851, when Murray became a member. When Hastings' term expired in January, 1852, Lyons became the Chief Justice, which position he held for three months, when he resigned March 31, 1852. Heydenfeldt succeeded Hastings. For a period of three months the majority of the Court were Jews. Upon Lyons' resignation he was succeeded by Anderson.

Lyons wrote eleven opinions during the little more than two years he served, nine of them, comprising about a dozen pages altogether, as an associate justice, and two as Chief Justice. This is an average of less than one short opinion every two months. He wrote one dissenting opinion of nine pages. He was the low man in the production of opinions for the period he served. Lyons and Hastings devoted a great deal of their time with considerable success to furthering personal business interests while on the Court, most of it probably relating to real estate transactions, with Lyons' deals centering largely in San Francisco. While most of Lyons' few opinions have been later approvingly referred to by the Court, mostly in the early years, none constitute what could in any sense be regarded as leading cases.

It does not appear that Lyons returned to the practice on leaving the Court. Instead he devoted himself to business, which came to include a couple of markets and a warehouse business in San Francisco.

HENRY A. LYONS

Second Justice

Second Chief Justice

Much tragedy befell Lyons' family after he came to California. His wife died in 1851. She was only forty-six. Her remains were interred near those of her clergyman husband in the Pirrie family plot near Oakley. Two years later, in 1853, the youngest daughter, Eliza, died.

Sometime about 1861 Lyons married Mary Bailey Glentworth in New York City. She had been a close friend of Lyons' oldest daughter, Lucy, and was much younger than Lyons. In 1862 there was born to them a son who was named after his father. He was born in or near Buffalo, New York. Like his father he was called Harry. This marriage did not prove a success and in 1868 they were divorced in New York City. Mrs. Lyons was awarded the custody of their son. Later she resided in Paris, with her father James Buden Glentworth. She married Charles A. Dumler of Wiesbaden, Germany. Henry A. Lyons, Jr., was educated abroad, and entered the American consular service. He was vice consul at Nice in 1924, when he suffered a stroke, necessitating his retirement. During his lifetime he formed many acquaintanceships in Belgium, Germany, France, Austria, Hungary, Poland, etc. People from all these countries were remembered in his will.

After the death of Lyons' first wife the daughters divided their time between Louisiana and California except when they were in Europe. Lucy, a young lady approaching nineteen, died in Louisiana in 1862. Her remains were first interred in Louisiana, but due to the unsettled condition in the South, were later brought to Laurel Hill Cemetery in San Francisco.

Lyons apparently made several trips back to Louisiana after coming to California. He received a six months' leave of absence from the Legislature while he was a justice. His plans were to visit Louisiana at the time of his second marriage but he encountered difficulty in making a landing there, and this is said to be the reason he went on to New York. In New York he was given to understand that the Yankees were after him, whereupon he went more or less into hiding, staying with the Glentworth family.

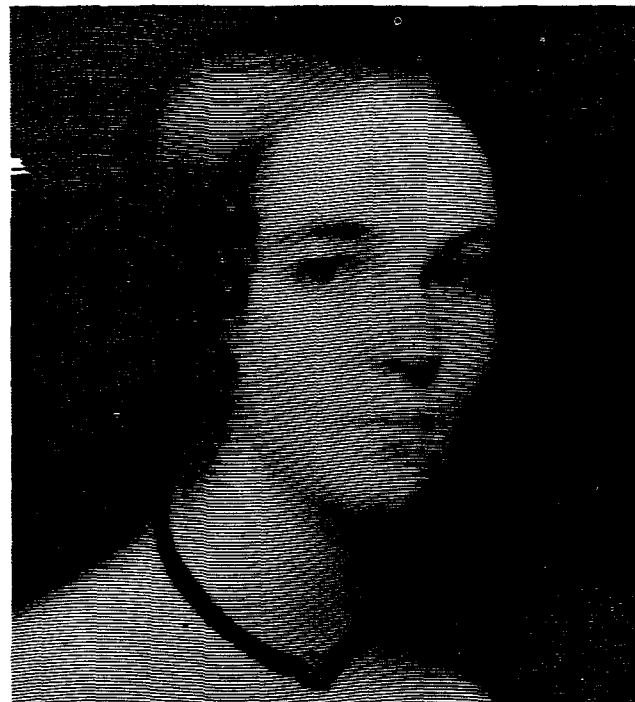
In San Francisco Lyons lived a number of years in hotels. Later he acquired a fine home on Rincon Hill, at that time the fashionable part of the city. It is said he won this home at poker from Hall McAllister. This home was destroyed in the fire and earthquake of 1906 and never reconstructed. This is now an indus-

trial part of the city. Lyons also won from Hall McAllister a set of fine diamond shirt studs which it delighted him to display and give the history of as opportunity afforded.

While Lyons was a Jew and unquestionably grounded in the Judaic traditions, he nevertheless was not uninfluenced by Christianity. Despite sundry reports as relates to his predispositions to Christianity, Eliza Pirrie's influence was probably the controlling factor. It appears that Lyons' father designated a Christian minister (a Dr. Stratton) as guardian of his children in his will. This, of course, could well have been prompted by other than religious motives. The fact that Lyons' funeral was conducted in an Episcopal church ties in with the church of Eliza Pirrie Barrow Bowman Lyons.

Lyons died in San Francisco July 27, 1872, at the age of sixty-two past. The funeral services were held at Trinity Church on Post Street. His remains were interred at Laurel Hill Cemetery. In 1912 the elaborate Lyons-Floyd vault and the remains thereof were moved to Cypress Lawn Cemetery.

Lyons left surviving him his daughter Cora A. (Mrs. Richard S. Floyd),⁶ and his son Henry A., Jr. There is no record of any memorial services in his



Eliza Pirrie Barrow Bowman Lyons

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honor in the Supreme Court. Some of the San Francisco courts noted his passing and adjourned in his honor, where mention was made of his "ability, integrity and worth."⁷

Lyons left an estate of something over five hundred thousand dollars, practically all, if not all, of which was accumulated after he came to California. Nearly two hundred thousand was money at the time of distribution. He had practically no debts. He bequeathed to his son \$20,000 and \$1,000 a year until he should complete his education. The rest of his estate went largely to his daughter Cora.⁸

One of Lyons' prominent traits was his pro-Southern sentiments. His friends and associates were in a large degree the Southern set. He moved with the most aristocratic of this group. Their air of superiority often irked Northerners. There is no reason to believe Lyons made any special effort to conceal his loyalty to Southern men and ways. While he was only medium size and height, he was nevertheless rather distinguished looking, and is said to have resembled Louis Napoleon in appearance. He was regarded as handsome in his younger days. On one occasion General Albert Sidney Johnston's wife called on Lyons and his daughter Cora. It was at a time when feeling between the North and South was acute in California. When Mrs. Johnston got ready to leave Lyons offered to escort her home, which, although she observed was unnecessary so far as her safety was concerned, was accepted. Later she mentioned that she would have attracted much less notice if she had gone alone as everybody noticed Lyons. The tradition in the family (the Bowman side) is that he was a "highly educated man."⁹ It is a fact that he wrote a good hand. The fact that he associated through the years with the more exclusive and cultivated would bear out that he had much to commend him.

Captain Richard S. Floyd, who married Cora Lyons, was also a dyed-in-the-wool Southerner. The Floyds had an only daughter, Harry Augustus Lyons Floyd. She went by the name Harry, as her grandfather, Lyons, had. The Floyds lived in San Francisco and in Lake County, where they had extensive agricultural and horticultural interests. They built a beautiful home on the easterly edge of Clear Lake, opposite Lakeport, which they called Kono Tayee. For years it was a showplace of the county. Many happy social affairs took place there while the Floyds

lived. It continued to be a delightful summer retreat for Harry Augustus Lyons Floyd and her friends and relatives after her parents died. They had about everything for interesting recreation, including a commodious launch.

Lyons' granddaughter was a young lady of spirit and independence. While she had been brought up in an atmosphere of exclusiveness, that did not deter her from following her own bent, including the department of romance. It was common for her to take the cable car in leaving her San Francisco home on Sacramento Street to go shopping, returning with her purchases the same way. One of the street car conductors was a young Servian recently come from Herzegovina. He was tall, strong, more than passing handsome, polite, and courteous. Though only a street car conductor, he nevertheless dressed meticulously, not omitting dress gloves, and while he understood little English, nevertheless had all the marks of a gentleman. No lady need have concern about getting on and off a car, or finding a place for her packages, if she were fortunate to connect with his car. Harry Floyd fell for him—fell so hard that no one else could ever possibly do—and after a brief romance, they went to the altar while high society commented! They were married first by Judge Morton S. Sayre of Lake County, and later in the Greek Orthodox Church in San Francisco.

They were supremely happy, but tragedy awaited. A few months later she died without living issue. The hero of her life, Milos Mitrov Gopcevic, fell heir to the Lyons-Floyd fortune, including Kono Tayee. He later married Marian Dodd. Mr. Gopcevic died April 7, 1951, leaving no issue, devising and bequeathing his estate of a value of less than Lyons left, to his wife. She died in 1959, at which time this estate moved into strangers still another degree removed. Mr. Gopcevic made his home at the fashionable Brockelbank Apartments on Nob Hill in San Francisco for many years.

Harry Augustus Lyons, Lyons' son, died in Cleveland, Ohio, February 21, 1934, without issue. In connection with the probate of his estate in the New York County Surrogate's Court it was necessary to reconstruct his family tree so far as that was possible. In connection therewith the attorneys for the estate, David, Polk, Wardell, Sunderland & Kiendl (Stanish F. Medina), made a considerable investigation and the family tree which was reconstructed and the affi-

HENRY A. LYONS

Second Justice

Second Chief Justice

davit of the diligence exercised in ascertaining the next of kin are now part of the record of this probate, and may probably be consulted by anyone having an interest.

During their lives Lyons' daughter Cora and her husband acquired a very fine agricultural property in Kelseyville, Lake County, called Quercus, comprising some seven hundred acres, which is still part of the estate. While a beautiful agricultural project, farming no longer holds the advantages for going ahead financially which many other fields today do.

At the time of Harry Augustus Lyons Gopcevic's death, the latter's kin, represented by the children born to her grandmother by Barrow and Bowman, expected to share in her estate, but her will was held good and precluded that.

Mr. Gopcevic was a most likeable and friendly individual. He co-operated without reservation when the writer was gathering material on Lyons and several pictures of Lyons' children, and his first wife, were

procured from him. He took the writer through the mansion known as Kono Tayee. This was in 1937. While the place was well cared for, no one lived there then.

FOOTNOTES

1. This date is arrived at by taking his age as sixty-two, nine months, and twenty-two days at the time of his death July 27, 1872.
2. See, for instance, Stanley Clisby Arthur, *Audubon* (1937), p. 390.
3. *Ibid.*, pp. 261-262.
4. *Ibid.*, p. 390.
5. Letter from Lee C. Bradley, Jr., Birmingham, Alabama, to writer, February 21, 1944.
6. Richard S. Floyd was a brother of William Gibbs McAdoo's mother.
7. *S. F. Daily Evening Bulletin* (July 30, 1872), 3.
8. *Daily Alta California* (Nov. 1, 1873). The probate records were lost in the fire of 1906.
9. Interview with Lucy Mathews, granddaughter of Eliza Pirrie Barrow Bowman Lyons and her second husband, Rev. Bowman, at Oakley Plantation, May, 1940.

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Nathaniel Bennett

Nathaniel Bennett's juridical accomplishments are the most substantial of the three men who comprised the original justices of the Supreme Court of California. The other two eclipsed him in financial success, however.

Bennett's life is outstanding in several respects. He is credited with doing as much as, if not more than, any man in bringing about the adoption of the common law as the basis of the jurisprudence of California. He was regarded as the strong man of the Court in his day, a judgment that has been confirmed with the years. He was not without gifts as a legal writer, and was an orator of more than usual ability. A considerable part of his earlier life was spent in sampling life in fields foreign to law.

Coming to California in young manhood, he nevertheless had had a number of years at the bar before arriving. This he turned to account in California. He was associated with no less than a dozen different partners during the period he practiced in California. While not without influence among the political leaders of his day, he was perhaps too judicial in temperament to shine to the greatest advantage in this department.

Bennett was born in Clinton, New York, June 27, 1815, a son of Nathaniel and Sarah (Cable or Cabelle) Bennett, and the youngest of their nine children. His parents were natives of Connecticut. While of English stock, his mother nevertheless was of French ancestry some generations back.

Two of Bennett's brothers became successful lawyers, his oldest brother, Philander, in Buffalo, where he served as a judge of Erie County Court of Common Pleas, and Edward in New York City.

Some years before Bennett's birth his parents moved to Catskill, New York, and thereafter to Clinton to enable their children to complete their education at Hamilton College. When Bennett was still only four or five his parents moved from Clinton to a farm some eight miles from Buffalo. This move was in a great degree influenced by Bennett's brother Philander, then meeting with success in politics, business, and professionally in Buffalo. Bennett received his elementary education in the common schools of the vicinity of his new home, one of which was a public school maintained in the Village of Williamsville, distant about a mile and a half from where he lived. At eleven or so he entered the high school in Buffalo, remaining there about a year, when he entered the Partridge Military Academy, in the same community, where he remained two years. The head of this school had been a teacher at West Point. He next attended an academy in Canandaigua, conducted by a man by the name of Howe, where he remained until prepared for college. The Howe Academy had enrolled at this time a number of boys who were later to win distinction, and included Stephen A. Douglas.

Upon completing his studies here, Bennett entered Hamilton College where he studied a year or two. At this time he was considering medicine for a career, and took some courses that would have been preparatory thereto. He then concluded to continue his studies at Yale and went to New Haven in 1833. At Yale he insisted on senior standing while the college would grant him only junior rating. When they would not yield, he returned to his home near Buffalo, to the surprise and disappointment of his parents. One of the considerations that influenced him to insist on senior standing at Yale was his impatience to participate in the wave of so-thought prosperity that was beginning to sweep over the land at that time—the

NATHANIEL BENNETT

Third Justice, December 26, 1849-October 3, 1851

beginning of "that golden era," to use an expression by Joseph G. Baldwin, "when bank bills were 'as thick as autumn leaves in Vallombrosa,' and credit a franchise."¹

After returning from New Haven, Bennett went to Cleveland, where a brother-in-law had met with success in land speculations. He planned to get in on like profits while studying law there. He thereupon made a connection in Cleveland with a fine firm, Payne & Willson, comprised of Henry B. Payne and Hiram V. Willson, both of whom he had known at Canandaigua. They were at this time meeting with success at the bar. Mr. Payne later served Ohio as a representative in Congress and also as a United States Senator. He was a leading presidential aspirant in the Democratic convention in 1880. Mr. Willson became a United States district judge for the northern district of Ohio. They treated Bennett with a consideration which remained for him a pleasant memory the rest of his life. He was admitted to the bar in Cleveland in 1836 or 1837 and commenced practice there. Land speculations had entered prominently into his activities his entire sojourn of upwards of four years here, but not always with profit.

About a year after his admission to the bar he joined a young man² in plans to go on a fur expedition to Santa Fe. While the expedition would not be leaving until the following spring, they nevertheless took all of the winter of 1837-1838 to get to St. Louis, the point from which it would start. They first went to Cincinnati where Bennett stopped a short time with an old college friend, who was succeeding at the bar there, who offered him a connection which he declined. From Cincinnati they went to Louisville, where they remained some weeks. Here they became interested in the stage and took part in some theatrical productions. Their ambitions were towering, and above their abilities. The manager successfully undertook to discourage them. They abandoned their dream "of acquiring fortune and fame from behind the footlights."³

From Louisville they continued down the Ohio to Paducah, and then up the Wabash as far as Lafayette, Indiana. Returning south they went up the Tennessee River as far as Tusculumbia and Florence in Alabama, where they became interested in some ancient Indian mounds and explored a number of them.

During the winter they heard a great deal that had a discouraging effect on their plans to continue on with the fur expedition—of the hardships and the wild and lawless characters that might constitute the party. Changing their plans, Bennett returned to Buffalo. Satterlee went to New Orleans and took up the practice.

In Buffalo Bennett heard much of the promising outlook in Toledo, Ohio, and decided to go there. Here he formed an association with a lawyer by the name of Morton. After about six months he became discouraged and left, going to Cleveland again, and then to Buffalo. He had not yet learned that men grow into the law, and that confidence in a young lawyer is a plant of slow growth.

While Bennett had made two starts in the law, he did not regard himself sufficiently learned therein to carry on a successful practice. He thereupon took up the study of the law anew, in 1840, studying in real earnest for a season. Soon thereafter he was admitted to the bar in New York, first as an attorney and solicitor and three years later as counselor. He then took up the practice in Buffalo in association with Eli Cook, a brother of Elisha Cook, who later became a partner with him in San Francisco. The next two years he addressed himself diligently to his profession with considerable success financially as well as professionally.

In the fall of 1842, he was ready for a rest and change once more. With a young lawyer by the name of Riley Saunders he concluded to make a horseback trip to New Orleans.

At Columbus, Ohio, they had the good fortune to hear Thomas Corwin. Bennett was "completely captivated by the wit, fun, pathos, and raillery of the celebrated Whig orator."⁴ McKinstry, who came to the Court later, tells of hearing Corwin at Perrysville, Ohio, in 1840, when 40,000 were present. From these two men alone may be gathered the magic of Corwin's speaking powers. At Cincinnati they and their horses boarded a river boat which took them to New Orleans, where they spent a couple of months.

From New Orleans they rode their horses up the edge of the Mississippi to Baton Rouge, Vicksburg, Natchez, the center part of Alabama and Tennessee to Nashville. From Nashville they rode out to the Hermitage and paid their respects to Andrew Jack-

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son, then on to Mammoth Cave, and Lexington, where another treat awaited them in hearing Henry Clay at his speaking best. From there they went through Maysville, near the boyhood home of Beatty, the future fifteenth Chief Justice of California, at the time aged four, on up through Wheeling and Pittsburgh and on to Buffalo.

Bennett revised his views of the South as a result of this trip, fancying a backwardness there compared with the North, which he ascribed to slavery.

Bennett now took up the practice the fourth time, in Buffalo, becoming associated with an old school-mate by the name of Rollin Germain. He also engaged in political activities, affiliating himself with the Barnburners, as that branch of the Democratic Party was called which was led by Martin and John Van Buren, Silas Wright, Benjamin F. Butler, etc., opposed by the Hunkers, as the other wing was called. The Barnburners evolved into the Free Soil Party later. Though not a delegate he attended the Barnburners' convention in Buffalo, working for Van Buren for President.

As 1848 was coming to an end Bennett had once more had all the law he cared for. He had worked hard over a period of years, had suffered some sickness, but had prospered financially. He was making plans for a trip to Europe when word came that gold had been discovered in California, an event that was greatly to influence his future.

Bennett joined a number of friends in forming a company to mine for gold in California. Part of the group went by way of the Isthmus and part by the *Mentor*, an old whaling vessel that sailed from New London around the Horn. They took sufficient provisions to last a year or two; also a great deal of heavy mining machinery, most of which was abandoned as useless upon reaching California.

Bennett was with the group which came around the Horn. They left New London the latter part of February, 1849, and arrived in San Francisco June 30th. They stopped at Rio de Janeiro a week and at Juan Fernandez (a Robinson Crusoe island) off the coast of Chile, some days.

The trip proved a most delightful one for Bennett. He did not even suffer seasickness. In the course of the long journey he addressed himself diligently to a study of the Spanish language. Languages were a fav-

orite interest with him. Already he was more or less proficient in Greek, Latin, and French. He spoke and read German "with fluency and facility."⁵ His interest in Spanish continued through the years.

Some of the company who had come by way of the Isthmus had already settled on the place to operate, the "Southern mines" area in Tuolumne County, when Bennett arrived. It fell to the lot of Bennett and a single companion to take the provisions and supplies from the *Mentor* by way of boat from San Francisco to Stockton, from where they were transported overland to the mining area.

The group found a rich bar at the mouth of Wood's Creek about two miles below Jamestown, also known as Jacksonville.⁶ Almost before they got started the group began breaking up, but Bennett and some others worked out a footage acquired on this bar and made some money. As they commenced looking for a new location, Bennett ran across John Satterlee, who persuaded him to join him and go to San Francisco to take up the law practice. He had engaged in mining a couple of months.

The new life continued to agree with Bennett. When he left for California he weighed one hundred and twenty pounds. Within two years he gained sixty pounds. (The fabulous testimonials of California as a place to come for health started early.)

Apparently Bennett had contemplated quitting the law for good on leaving the east, feeling that all that it involved was more than his constitution could take, and had supposed going to California only another interesting trip. He therefore did not bring a single law book.

Bennett's association with Satterlee became known as Bennett & Satterlee. Soon Myron Norton, returning from the constitutional convention in Monterey, joined them. This continued until Bennett was elected member of the Supreme Court.

Upon the adoption of the Constitution of 1849 Bennett was elected one of the two Senators from San Francisco. The other was G. B. Post. He was on hand at Pueblo de San Jose when the Legislature met on December 15. From the beginning he took a leading part in the affairs of the Senate. He made the very first motion that was made, proposing E. Kirby Chamberlain, from the San Diego district, as president pro tem and John Bidwell from the Sacramento

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district for secretary. A glance at the journal of the Senate bears out that he played a leading part the short period he served before being elected a member of the Supreme Court. His resignation from the Senate was read in the Senate December 24. David C. Broderick immediately qualified as his successor. McKinstry was at this time making a record in the Assembly similar to the one Bennett had made in the Senate, which carried on throughout the entire session. With Burnett, the first Governor, also later on the Court, it will be noted that men who served on the Court had a prominent part in getting all branches of the state government operating.

Sentiment was divided as to whether the civil law or the common law should be adopted as the basis for California's jurisprudence. The Governor in his message recommended the adoption of the definition of crimes known to the common law, the English law of evidence, the English commercial law, the civil code of Louisiana, and the Louisiana code of practice. A petition signed by John W. Dwinelle and seventeen other lawyers from San Francisco prayed that the civil law system be adopted.

Bennett remained in San Jose after his resignation, working for the adoption of the common law system as the basis of California's jurisprudence. On February 27, 1850, E. O. Crosby who had succeeded Bennett as chairman of the judiciary committee in the Senate, reported the recommendation that "the American Common Law" become the basis.

Much speculation has obtained as to who drafted this report, some ascribing it to Bennett, others to Crosby and his associates on the committee. Oscar Shuck in his *History of the Bench and Bar of California* states he had a dispute in 1878 with George W. Tyler about the authorship, Tyler taking the view Crosby had written it and Shuck that Bennett had. Afterwards Tyler informed Shuck "that he had seen Judge Crosby again, and that the latter disclaimed the authorship and credited the same to Judge Bennett." "Many years after this," Shuck continues, "in 1894," he "requested Judge Crosby to give" him "some notes on his life" and "received from him in his own hand, . . . among other statements, the following: 'I was the author of the report and bill adopting the common law, the bill organizing the Supreme and District Courts, etc., etc.'" Shuck concluded "the report was probably the joint product of Judge

Crosby and Judge Bennett."⁷ The style of much of the report is exactly that of Bennett, comparing it with his admission day and completion of the Central Pacific Railroad speeches.

The report reported in the first volume of the California Supreme Court reports demonstrates that some of the encomiums to the common law are amusingly extravagant and the merits of the civil law unduly disparaged.⁸ However, the report accomplished its purpose.

Of the first three men to come to the Court, Bennett had the hardest time being elected, but once in, fortune smiled on him, and he drew the long term of six years. He was, however, the first to leave the Court, resigning October 3, 1851. Notwithstanding the fact that his period of service covered the shortest period, he did about twice as much judicial work as the other two justices put together, writing ninety-three opinions for the Court and five dissenting ones. This was an average of better than one opinion a week. One or two of his opinions have found their way into the casebooks.⁹

Edward Norton, later a justice, was appointed reporter of the first Supreme Court decisions. By May, 1851, when far advanced on the assignment relating to the first volume, his manuscript was destroyed in the fire of May 4, whereupon he resigned. Bennett thereupon took up the task, which he completed, doing most of the work while still a justice.

Bennett's resignation from the Court in October aroused suspicions not entirely to Bennett's credit.

Bennett's explanation as reported by Phelps, is that the salary of \$10,000 a year was paid in state scrip which went down to thirty-five cents on the dollar, insufficient for his needs, which fact with the monotony of the position, induced him to again take up the practice. However, continues Phelps: "... he nevertheless would not have given his resignation, had it not been for the full assurance that Edward Norton, Esq., would be appointed his successor . . . in former years a Buffalo townsman of Bennett . . . but, to the astonishment of all but the members of a corrupt land clique which then controlled the city of San Francisco, another person of no reputation as a lawyer, but who had been subservient to the wishes of the clique, received the appointment of the governor."

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The version that was more or less accepted among the profession was summarized by John Currey, later a member of the Court, as follows:

"... Some time after the Court was organized, the case of Woodworth against Fulton... came before the court on appeal. The case was an action of ejectment by Woodworth for the recovery of a fifty vara lot in San Francisco granted by an American Alcalde upon which Fulton in defiance of Woodworth's alleged title had taken possession. The trial court had given judgment to Woodworth. This judgment the Supreme Court reversed by an opinion rendered by Justice Bennett, and holding the American Alcalde grant to be void. This decision produced among the lawyers and influential class of citizens of San Francisco, who claimed lots under like grants of title, a profound consternation and a rehearing of the case was secured, but not with an entire confidence that the decision would be changed by the Court. Justice Bennett was the great obstacle in the way, for he was recognized by the other members of the Court and by the legal profession generally as the strong man of the Court, who would not change his decision as long as satisfied with its soundness as a matter of law. In view of the uncertain outcome of the effort on the part of the holders of the lots granted by American Alcaldes which were esteemed of great value prospectively, these lot holders determined to remove from the bench Justice Bennett by inducing him to resign. This was, as I remember, in the second year of his allotted term of six years. To induce him to resign, he was offered a large sum of money, [such] sum amounting to as much as his salary for the balance of his term which he accepted, then returned to the home of his native state. The propriety of this step on the part of Justice Bennett has always seemed to me questionable, though I doubt not his position was made very uncomfortable in San Francisco by the large and influential class of property holders whose interests seemed to them to be in dire peril. The place so made vacant was filled by the Governor by his appointment of Hugh C. Murray whose views [differed from those] of the opinion of Justice Bennett. Judge Murray was then a very young man of wild and questionable habits, of great natural ability, but was not then esteemed by the older men of the legal profession in San Francisco as a lawyer of much learning..."¹⁰

As mentioned by John Currey, Bennett went east upon leaving the Court, where he remained about a

year and a half, returning to San Francisco in 1853 where he again took up the practice. This was his sixth start. For all that appears he practiced a number of years alone.

In 1858 he went to Washington, D. C., where he represented interests before Congressmen and also before the Supreme Court of the United States. He remained in the east some three years. Apparently it was at this period that he married, and for a time took things somewhat easy. He spent an entire summer at Saratoga Springs, and part of another at Newport. He and his wife returned to San Francisco by way of the Isthmus in the late fall of 1861.

Bennett, Love & Love; Bennett & Thorne; Bennett, Cook & Clarke; Bennett & Owen; Bennett & McClellan; Bennett & Williams; Bennett & Jones; Bennett & Wiggenton; and Bennett, Wiggenton & Creed, are the different ways his firms appeared from 1863 to the time of his death in 1886.

The Dictionary of American Biography speaks of Bennett's practice as "chiefly" related to "big business." "He became very prominent in connection with the notorious litigation known as the 'Bonanza Suits.' In May 1878, action was brought against John W. Mackay, James G. Fair, and others, alleging misappropriation of funds of the Consolidated Virginia Mining Company, and other suits followed involving approximately \$36,000,000. He acted as attorney for the plaintiff in some of these actions, which were ultimately compromised on terms which were never divulged."

Of the first three justices, Bennett was the only one who kept a finger more or less in politics through the years. While not necessarily on the wrong side always as regards soundness of principles, he nevertheless was so after leaving the Court as relates to the votes. The first Republican Party mass meeting in California was held in Sacramento, April 19, 1856. On the 30th the party held its first state convention. Edwin B. Crocker, of unconcealed Abolitionist views, was temporary chairman and Bennett became the permanent chairman. He was nominated by the Republicans in 1857 for the Supreme Court; also by the Settlers and Miners Party. His name was presented for the Court in 1869 but he did not win the nomination. He was nominated by the Republicans to be a delegate to the constitutional convention of 1878-1879. He was one of the organizers of the New

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Constitution Party in 1879 and its nominee for the Supreme Court. None of this was to any avail as relates to Bennett.¹¹

In 1867 and 1868 Bennett and his partner John W. Owen published the *Pacific Law Magazine*, to which Bennett contributed in the way of learned writings, giving him a place in the history of legal journalism in California.¹²

Bennet had more than the usual gifts as a public speaker. There was in his personality, and manner of putting ideas together and expressing them that which stirred the emotions of the listeners. He came up to the high standards desired in giving the principal speeches celebrating California's admission to the Union October 29, 1850, and the completion of the Central Pacific Railroad May 9, 1869. There can be no question that he had cultivated this gift from the days of young manhood when he heard Corwin and Clay. When he passed away he bequeathed to the Mercantile Library in San Francisco *Isocrates' Orations*, thought at the time to have been one of the oldest printed books in California. Shuck mentions that his Admission into the Union address was "treasured among the archives in the county recorder's office in San Francisco."¹³ Space here does not permit of quotation of even short extracts to show his style. Needless to say these orations portray vividly things and conditions which obtained as of the time they were delivered.

Bennett died at his residence at 2425 Filbert Street, San Francisco, Tuesday night, April 20, 1886,

of dropsy. His wife had predeceased him a short time before. He was survived by a niece.¹⁴ The funeral was held at his home April 23. He left a will whereby he devised and bequeathed his estate largely to Margaret Ulsener, presumably the niece referred to above, who had been a member of his family about twenty-five years. She was designated as the executrix. He bequeathed his law books and an interest in lands in San Joaquin County to his partner, Wiggenton.

It is clear that Bennett was not disposed to become a slave of the jealous mistress, and when her demands upon his energies reached a point that took the joy out of life he did not hesitate to take a vacation. It may be that she withheld from him some of the rewards and fame that might have been his if he had not been as independent in this regard as he was. Despite his extended periods of diversion and bids for adventure, he was nevertheless a man of solid parts. With his deliberate, steady, bookish qualities, and disposition to consider thoroughly all sides of a problem, he could also be two-fisted if occasion called for it, as may be illustrated by his advice to Stephen J. Field when Judge Turner was making life unbearable for him in Marysville. "I will not give you any advice," said Bennett, "but if it were my case, I think I should get a shot-gun and stand on the street, and see that I had the first shot."¹⁵ Bennett tried living and working in several localities, but came to equilibrium and contentment of feeling in California, and was one of the men who made history here during his lifetime.

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FOOTNOTES

1. *Flush Times of Alabama and Mississippi* (Sumner Whitney & Co., S. F., 1876), p. 1.
2. Benedict Satterlee, brother of John Satterlee, Bennett's first partner in S. F.
3. Phelps, *Contemporary Biography of California's Representative Men* (Alonzo, 1882), Vol. II, p. 380.
4. *Ibid.*, p. 381.
5. *Ibid.*, p. 380.
6. *Ibid.*, p. 393.
7. *History of the Bench and Bar of California* (1901), pp. 48-49.
8. "... it is nevertheless true, that with a few rare exceptions, on either side, there is a strongly marked boundary between the domain of the respective systems. In the one, you perceive the activity, the throng, the tumult of business life—the other, the stagnation of an inconsiderable and waning trade; in one, the boldness, the impetuosity, the invention of advancing knowledge and civilization—the other, feebleness of intellect, timidity of spirit, and the subserviency of slaves;

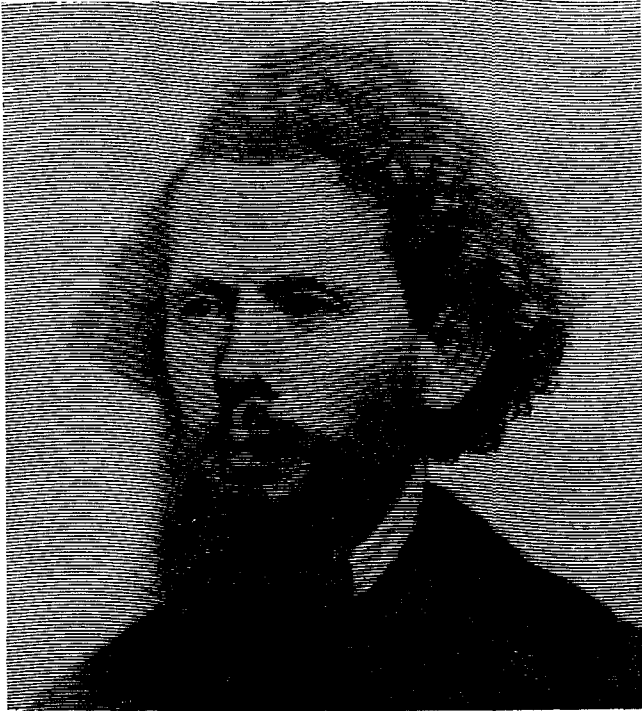
in the one, the strength and freshness of manhood—in the other, the weakness of incipient decay. The one possesses a progressive and reforming nature—the other partakes of quietude and repose; the one is the genius of the present and the future—the other, the spirit of the past; the one is full of energetic and vigorous life—the other, replete with the memories of a by-gone and antiquated order of things."

9. *Rogers v. Huie* 1 Cal. 429, Edward Warren, *Cases on Property* (Harvard, 1915) may be mentioned.
10. Manuscript in California State Library, Sacramento, California.
11. Davis, *Political Conventions*.
12. *The Recorder* (S. F., March, 1926), Supplement.
13. P. 446. The writer has had access to the copy of the admission speech as it appears in Shuck, *Representative Men of the Pacific*, p. 553, and to the completion of the railroad address as set out in *Alta California* (May 9, 1869).
14. *Alta California* (May 9, 1869), 1, col. 2.
15. Field, *Personal Reminiscences of Early Days in California* (1893), p. 53.

HUGH C. MURRAY

Fourth Justice, October 11, 1851-March 31, 1852

Third Chief Justice, March 31, 1852-September 18, 1857



Hugh Campbell Murray

Hugh Campbell Murray was born in St. Louis, Missouri, April 22, 1825. Both his father and mother came from Scotland. In his youth, Murray's family moved from St. Louis to Alton, Illinois. Here he grew up and received his general education. Although the details relating to his legal education are unknown, it is reported that he studied his law in the office of Newton D. Strong, in Edwardsville, the county seat of Madison County, in which Alton is also located. Mr. Strong was a brother of William Strong, later a justice of the Supreme Court of the United States. Early in 1847 Murray became a lieutenant in the war with Mexico, and served for about one year, whereupon he returned to Alton. In 1849 he came to California by way of the Isthmus. The ship he boarded at Panama made such slow progress that he and some of his sailing companions got off at Cape St. Lucas, on the tip of Lower California, and walked the rest of the way.¹ He arrived in San Francisco in September. It had taken six months to make the journey from Illinois.

Murray promptly entered politics in San Francisco and took up the practice of the law. He had not been here long before he became a member of the

ayuntamiento, or town council, of San Francisco. Early in 1850 he became one of the three judges of San Francisco's early day "Superior Court," a municipal court. He held this position until he was appointed a justice of the Supreme Court of California in October, 1851, taking the place of Bennett, who had resigned. While Murray had shown considerable natural ability up to this time, he nevertheless was regarded by many as a young man of wild and questionable habits, and not much of a lawyer. He was twenty-six past when he came to the Court. No one has ever come to the Court younger. When Lyons resigned early in 1852, Murray became Chief Justice. He was elected to succeed himself in 1852 and again in 1855. The race was close in the last election and he won by only a few hundred votes.

Despite Murray's personal and social irregularities, such as drinking, gambling, physical altercations with people, etc., he settled down in real earnest to his judicial labors upon coming to the Supreme Court and did a great volume of work through the years he served. A fair share of his opinions are still referred to as correct statements of the true rules. Although he has been referred to as one of those who brought the Court into disrepute in the early days, he, nevertheless, came to be highly respected among the profession, and there was a general feeling that the state sustained a great loss in his early death.

Murray died of tuberculosis September 18, 1857, superinduced by overwork and heavy drinking. The latter fact was the subject of prominent editorial comment at the time of his death. He was only in his thirty-third year when he passed away.

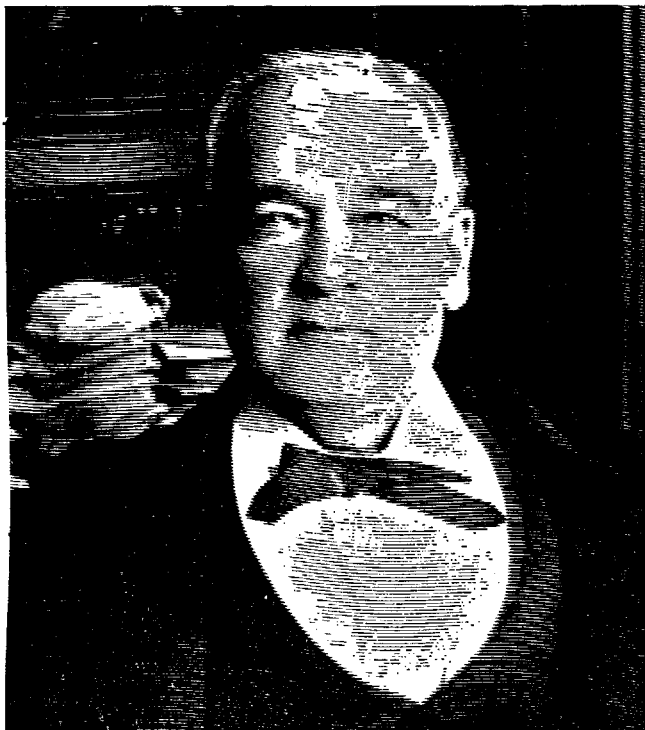
In appearance Murray has been described as "tall and bony, with flowing black hair."² He wore a full beard. He was a man of a great deal of dignity and was regarded as more than average good looking. He never married. His remains were interred in the Sacramento City Cemetery. The monument over his grave was placed there by the State of California. Apparently he left no estate to speak of. He left surviving him his mother, Mary C. Murray, and brother Charles, both living in Alton at the time.

FOOTNOTES

1. This seems almost unbelievable. Shuck is authority for the fact. *Bench and Bar of California* (1901), p. 436.

2. *S. F. Call* (Nov. 12, 1888), 1, col. 5.

THE CALIFORNIA JUSTICES



Solomon Heydenfeldt

Solomon Heydenfeldt was born in Charleston, South Carolina, September 14, 1816, and was the son of Jacob and Esther Desiree (DePass) Heydenfeldt. His father came to this country from Silesia and his mother from near Bordeaux. Heydenfeldt's father died when Heydenfeldt was about nine, leaving a sizeable family. The years following were not easy ones for them, and Heydenfeldt and his brother, Elcan, even spent some time in an orphanage. Leaving the orphanage, Heydenfeldt was apprenticed to a country doctor with a view of becoming a physician, but after a short time the doctor was accidentally drowned. Heydenfeldt then entered a so-called manual labor school in Pennsylvania, but withdrew when it turned out to be mostly work and little instruction. After some difficulty he was able, through the assistance of an aunt, to take up the study of the law in the office of Henry A. DeSaussure, in Charleston. Upon completing his studies he went to Montgomery, Alabama, where he remained a short time only, whereupon he went to Dadeville, in Talapoosa County. This was about 1837. Here he made a good start in his profession, but after two years went to Crawford, in Russell County. Here he married Sarah Jones, daughter of

a local doctor. In 1842, though a resident of Russell County, he aspired to the county judgeship of Mobile County, but was unsuccessful. This position was attractive by reason of the emoluments going therewith.

Heydenfeldt came to San Francisco in 1850, where he took up the practice. He lived for a number of years in Benicia, his first years in California. He made considerable headway in politics from the beginning and was an unsuccessful candidate for the United States Senate early in 1851. His opponents were John C. Frémont and Butler King. None was elected at the time due to a deadlock in the Legislature. Later the same year Heydenfeldt was elected a member of the Supreme Court of California, filling the vacancy caused by Hastings' term expiring, taking his place on the Court in January, 1852. He was the first man elected directly by the people to the Court.

When Heydenfeldt first came to California he came alone, leaving his wife and three children in Alabama. In 1852, after becoming a member of the Court, he returned to Alabama to bring them here. The journey to California proved a very tragic one. His wife died on the Isthmus and their baby, John O., as the ship was entering the Golden Gate.

Alexander Wells was appointed to serve on the Court the period Heydenfeldt should be gone. When Heydenfeldt returned, he joined the Chief Justice in holding the law under which Wells had been appointed unconstitutional.

Heydenfeldt served on the Court until January, 1857, when he resigned. He wrote some four hundred fifty opinions the period he served. They have often been referred to by reason of their brevity and even quaintness of presentation. As to soundness, however, they have stood up very well. Probably his most quoted opinion is *Robinson v. Pioche, Bayerque & Co.* (1855) 5 Cal. 460, an action for injuries received by plaintiff in falling into an uncovered hole dug in the sidewalk in front of defendant's premises. The trial court instructed the jury that if at the time of the accident plaintiff was intoxicated, he could not recover. Justice Heydenfeldt's opinion stated in part: "A drunken man is as much entitled to a safe street, as a sober one, and much more in need of it." Upon leaving the Court, he became associated in the practice with Oscar L. and James McM. Shafter and

SOLOMON HEYDENFELDT

Fifth Justice, January 20, 1852¹ - January 13, 1857²

Trenor W. Park. This firm did a good business and prospered financially. Heydenfeldt acquired substantial interests in real estate, both city and country, as well as some valuable mining properties. He became well versed in mining law and represented big interests, including Fair, Flood, Mackay, and O'Brien, the Big Four of Virginia City.

Heydenfeldt was pro-Southern in his slave views to the point of being a Secessionist. The Shafters were Abolitionists. While they differed sharply, they did not let this affect the very great esteem in which they held each other as lawyers and citizens. Heydenfeldt refused to take the test oath of loyalty which came with the Civil War, and not being able to practice in the courts withdrew from the firm of Shafters, Park & Heydenfeldt over the strong appeals that he remain with them and help take care of the heavy office work. After the war he practiced alone.

Heydenfeldt was public spirited in an unusually high degree. He encouraged cotton raising in California from an early date. With Julius Jacobs he was one of the founders of the Kindergarten in San Francisco, and with Felix Adler of New York, one of the pioneers of the movement in the United States. He served a number of years as president of the Kindergarten in San Francisco. He gave great sums of money to public and private charity. His charitable gifts were more like those of an institution than an individual. It was not uncommon for him to take a handful of silver dollars and give them to the poor holding out their hands as he walked from his street car to his office. Probably no lawyer rendered as much

free personal and legal assistance to people needing help as Heydenfeldt did in his day. He is reported to have waived all fees from the widows he served. As prominent men of San Francisco were presented with letters of introduction by newcomers from the eastern states wishing help in getting established they often felt their good offices had been well discharged when they referred these people to Heydenfeldt.

Heydenfeldt was married three times and had three groups of children. All his children bore the middle initial of O, standing for Ochtreigh, probably a corruption of Ochiltree, the name of a forbearer who was for a number of years a lady in waiting to Queen Elizabeth.

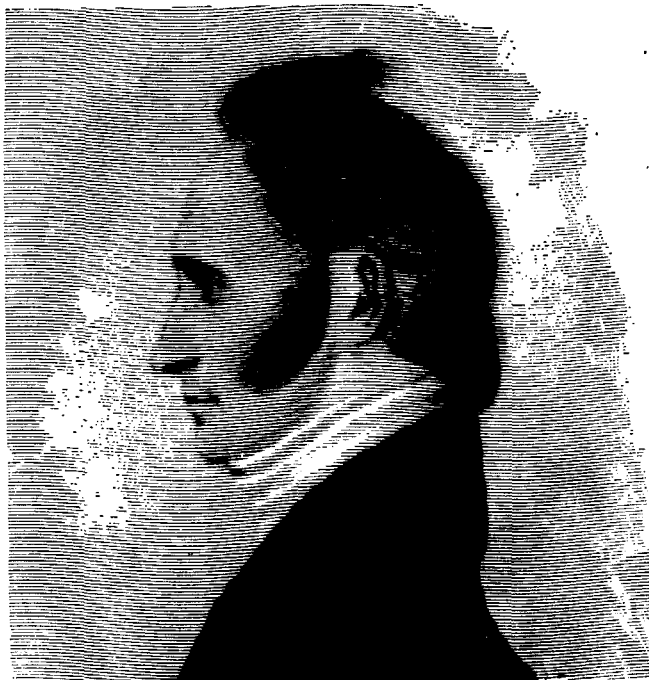
Heydenfeldt was small of stature, being about five feet five inches tall, with small hands and small feet. His complexion was dark and his eyes gray. While not an orator, he was a convincing and forceful speaker. By nature he was quiet, dignified, and firm to the point of stubbornness. He died in San Francisco, September 15, 1890. His remains are interred in the Home of Peace Cemetery. He left an estate of three hundred thousand dollars, or thereabouts. He did not profess to belong to any church. He was a Mason.

FOOTNOTES

1. Date of Heydenfeldt's oath on file with the Secretary of State.

2. It is assumed that Heydenfeldt served until his successor, Peter H. Burnett, was appointed. Burnett was appointed January 13, 1857. According to Shuck, *Bench and Bar of California* (1901), p. 458, Heydenfeldt resigned January 6, 1857.

THE CALIFORNIA JUSTICES



Alexander Anderson

Alexander Outlaw Anderson was born at Soldiers' Rest (present Leadvale or near there), Jefferson County, Tennessee, November 10, 1794. Washington was at this time serving his first term as President of the United States. Adams, Jefferson, and Madison were still to have their turn. John Marshall was practicing law in Richmond. Anderson was the second of his parents' seven sons. His father, Joseph Anderson, was a United States Senator from Tennessee many years. He held a number of other important public positions in addition to that of Senator. Anderson's mother was Only Patience Outlaw, a daughter of Alexander Outlaw, the latter a picturesque character, and one of the founders of the State of Franklin, and later of the State of Tennessee. The Outlaw name is of ancient English origin. Anderson was of German-Scotch-English descent. It may be assumed that he acquired his elementary education in the vicinity of his birthplace. He was attending Washington College, originally chartered by the "Lost State of Franklin," of which institution his father was for some time a trustee, when the War of 1812 broke out. Upon the outbreak of the war, at the age of eighteen, he joined the colors, and fought under his father's good friend, Andrew Jackson, at New

Orleans. After the war he took up the study of the law, some reports being that he did so in Washington, D. C., and was admitted to the bar at Dandridge, the county seat of his home county, in 1814. He was then not yet twenty-one. He commenced the practice here, but went to Knoxville a little later.

Anderson was married twice, first to a Miss Hamilton of Washington, D. C., who died without issue, and later to Eliza Rosa Deaderick of Jonesboro, East Tennessee. He had eleven children by his second marriage.

Anderson made progress both in the practice and in politics. In 1836 he was appointed superintendent of the United States land office in Alabama, and later was the agent of the government in moving the Indians from Florida and Alabama to Oklahoma. His kindness and humanity in carrying out this assignment has been commented upon. In 1839 he was elected by the Tennessee Legislature to the Senate of the United States, where he served from February, 1840, to March, 1841. Upon his term expiring, he took up the practice in Washington, D. C., practicing largely in the court of claims. He kept up his contacts in Tennessee and continued a man of influence there politically, professionally, and culturally.

In 1849 Anderson took the initiative in organizing a joint stock company to come to California to mine for gold. They left Knoxville May 5, 1849, and reached Sonora May 15, 1850. They came by way of St. Joseph, Leavenworth, up the Arkansas and Cimarron Rivers, Santa Fe, Albuquerque, Tucson, Yuma, Los Angeles, the Coast Missions to San Jose, etc. As can be imagined from the time it took, the journey proved an arduous one. The company mined in the vicinity of Sonora until September, when it broke up and each man followed his own course. Anderson was one of the older men who came to California with the gold rush.

In September, 1851, Anderson was elected a state Senator from Tuolumne County, and served in the Legislature from January, 1852, until the following April, when he was appointed a justice of the Supreme Court of California to succeed Lyons, who had resigned. His appointment was until such time as a successor could be elected in the next general election. While Anderson was in the Legislature, this body had had the duty of electing a United States Senator. Though not a candidate Anderson received

ALEXANDER ANDERSON

Sixth Justice, April 6, 1852 - January 2, 1853

a number of votes on a number of ballots. He aspired to succeed himself on the Court, but Alexander Wells won the Democratic nomination and was elected, succeeding Anderson in January, 1853. Anderson wrote some seventeen opinions for the Court the period he served.

Upon leaving the Court, Anderson returned to Knoxville. Later he went to Washington, D. C., where he resumed practice in the Court of Claims. He practiced in this court some twenty years altogether. Upon the outbreak of the Civil War, or thereabouts, he moved to Mobile, Alabama, where he practiced for awhile. He also carried on the practice for a period in Camden, Alabama, where one of his daughters lived. In due course, he returned to Knoxville, where he had property interests, including a farm. This farm is now part of the city. Anderson Street may serve to indicate the location of the land he once husbanded as a farmer.

Anderson died in Knoxville May 23, 1869. His remains are interred in the family plot in the Old

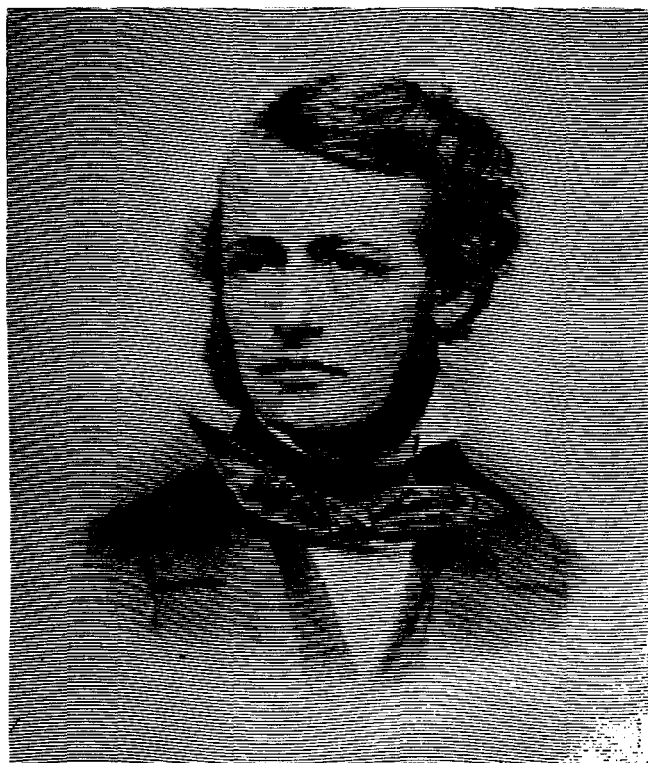
Gray Cemetery of Knoxville. The inscription on his tomb is simply "Alexander Anderson," with the dates of his birth and death and "Blessed are the dead who die in the Lord," without any reference to his having been a United States Senator or a Supreme Court judge.

Anderson has been described as "a tall square built man."¹ He was a good speaker. He was known through the greater part of his life as "General" Anderson, a title that had clung to him from the time he served in the state militia in his young manhood. He was brought up in the Presbyterian faith. His father is said to have been a very devout man, attending to his prayers three times a day. Anderson was the first of the three men born in Tennessee who have come to the Supreme Court of California, the other two being Peter H. Burnett, the first Governor of California, and John W. Preston.

FOOTNOTE

1. Seldon Nelson, *Knoxville Sentinel* (Feb. 20, 1909).

THE CALIFORNIA JUSTICES



Alexander Wells

Alexander Wells was born in New York City about 1821, and was of English stock on both his father's and mother's side. Apparently he grew up in more or less humble circumstances, the record indicating that he helped to support himself from an early age. Allusions to his supporting himself later by the pen suggests newspaper work.

He was admitted to the bar in New York City in 1841 or 1842, and practiced there until he came to California some eight years later. He maintained his office during this entire period on Wall Street. He became a leading politician in New York while still a young man, and was affiliated with the Tammany Democrats. In 1845, with twelve others, which included Samuel J. Tilden, he was elected from the City and County of New York to the Assembly of the New York Legislature. He did not do his work under a bushel, either in the Legislature itself, or in the caucuses incident thereto, nor always without opposition. In one caucus debate he and a colleague from the state Senate were referred to in the press as the Wellington and Blucher of the Radicals who opposed

the Bonaparte and Marshal Soult of the Conservatives. The reference of one correspondent for the *New York Herald* to Wells as the "Great Little Thunder"¹ is not without a suggestive connotation. The evidence is convincing that Wells at this time was an entertaining as well as instructive public speaker.

Wells came to California in 1849, settling in San Francisco. He was not long in getting into business and appeared as counsel in the Supreme Court during its first term, in March, 1850. He was a close friend of Edward McGowan, a judge of the court of sessions. As a rule Wells won his cases without difficulty in this court. On one occasion, however, the situation proved embarrassing. The attorney on the other side was also a good friend of the judge. The latter remonstrated with them for placing him in an untenable position and suggested they do not do so again.

As he had done in New York, Wells engaged in some of the liveliest political debates of California's first years, generally acquitting himself with added prestige. Some of these debates took place in rowdy settings.

Wells was appointed a justice of the Supreme Court of California, to sit temporarily in the place of Heydenfeldt for a period of six months, from April to October, 1852, while Heydenfeldt should be out of the state. There was a question as to the constitutionality of the act under which Wells was appointed, and upon Heydenfeldt's return the act was held unconstitutional. However, in the November, 1852, election Wells was elected to serve out the balance of Lyons' term, expiring in January, 1853. In September, 1853, he was elected for a full six-year term. His activities in connection with the election of 1853 show him to have possessed an unusually keen political instinct. He had served less than a year of the new term, when he died somewhat suddenly and unexpectedly at his home in San Jose, October 31, 1854. He left surviving him his wife and two little daughters. His only son had died a short time before. The funeral took place from the Protestant Episcopal church in San Jose and was under the direction of Bishop William I. Kip. Masonic ceremonies were conducted at the graveside. Apparently his remains were interred in the Masonic section of what is now Live Oak Cemetery in San Jose.

ALEXANDER WELLS

Seventh Justice, January 2, 1853-October 31, 1854

Temporary Justice in the Absence of Solomon Heydenfeldt, April-October, 1852

Wells wrote only some twenty-four opinions the period he served on the Court.

Wells was a small man physically. He gave his weight as one hundred and forty-five pounds at the time he was serving in the New York Legislature. He was a man of considerable ability, but did not always put it to the best use. His habits have been spoken of as bad in the extreme. He drank and associated with heavy drinkers. Despite the use of language often profane and unrefined, he was not without marked literary gifts. With all his faults, he

was not without his definitely good qualities, also. He is said to have been kind and indulgent in a marked degree in his family relations. His loyalty to friends knew scarcely any bounds. His sound learning, both in the law and outside of it, would indicate that he had been a careful student as well as possessed of a great deal of natural ability. From all reports his was a showy and striking personality, and one that attracted more than usual notice.

FOOTNOTE

1. *The New York Herald* (January 19, 1846), p. 4, col. 2.

THE CALIFORNIA JUSTICES

When I first knew him he was a young man, perhaps twenty-seven or twenty-eight years of age, . . . light-brown hair, blue eyes, the complexion of a carefully housed girl, but with a singularly expressive and strong face, a firmly-knit frame, say five feet nine inches tall, and weighing perhaps one hundred and sixty pounds.

—C. C. Goodwin, *As I Remember Them*.

His face so closely resembled the portraits of Bismarck he might have sat for a picture of the great General Chancellor without detection except by the most studious of physiognomists.

—*Sacramento Union* (May 18, 1877), 2, col. 5.

Charles H. Bryan was the son of John Alexander and Eliza (Dixon) Bryan. His first paternal ancestor in America was Alexander Bryan, who came from England and settled in Milford, Connecticut, in 1639. The writer has seen no dependable reference to the place or exact date of Bryan's birth. If he was fifty-four at the time of his death in 1877 as reported in the press,¹ the time of his birth would be sometime about 1823. From the facts that his father was admitted to practice in the court of common pleas in Olean, Cattaraugus County, New York, in 1818, that Bryan's parents were married in Ellicottville nearby in 1820, that his father took up the practice there and became the postmaster in Ellicottville in 1822, and that his parents were apparently living in Olean as Bryan's father was serving as district attorney in 1823-1824, it would appear that Bryan was born either in Ellicottville or Olean.

Bryan's parents moved to Columbus, Ohio, in 1829 or 1830, where his father became a joint owner, and later editor, of the *Ohio State Bulletin*. While no details have come down as relates to Bryan's early life, it does not take an undue amount of imagination to somewhat reconstruct it, taking into consideration the kind of pioneer communities he grew up in, the type of family he was part of, his father's activities, etc. (In addition to the positions already mentioned, Bryan's father served for a number of years as state auditor of Ohio, became assistant postmaster general

of the United States, and later Charge d'Affairs of the United States to Peru, where he spent about a year. The town of Bryan in Williams County, Ohio, was named after him. He was a gifted orator. Some of his speeches have survived oblivion.)

It may be assumed that Bryan's education was received in the common schools of Ohio's early days. The indications are that it assumed a classic turn as he advanced therein. His command of language, familiarity with the finest in literature, manner of speech, and air of culture and refinement would bear this out. These also serve to emphasize the influence of his father during his most impressionable years.

It may be assumed Bryan prepared for the bar in Ohio. He may have been admitted to the bar there, and judging from the showing he made upon arriving in California, may have acquired some experience there too.

Bryan came to California sometime about 1850 or 1851, settling in Marysville, where he entered the practice. Here he was a contemporary of Stephen J. Field, and stood shoulder to shoulder with him as one of the leaders of the bar in this community. He was particularly impressive before the jury, both as relates to civil and criminal cases, and attained wide fame as an advocate. He became the district attorney for Yuba County in 1852. As showing the progress he made politically it may be mentioned that his name was presented for Lieutenant Governor in the Democratic convention that met in Benicia in 1853. That same year he was elected to the state senate where he was spoken of as bearing an active and manful part of the responsibilities of this body.² His name was presented for Governor in the Democratic convention of 1854. Upon Wells' death in October that year, he was appointed a member of the Supreme Court of California, to serve until someone could be elected the following year. He became the Democratic candidate to succeed himself in the election of 1855, but was defeated by David S. Terry, running on the Know Nothing ticket.

While Bryan served only a brief year on the Court, hardly time to get more than started, his career on the bench was nevertheless a disappointment to those who had beheld his brilliant performances at the bar. It was the concensus of opinion that he did not show much aptitude for judicial work. He wrote some thirty-three opinions for the Court the year he served.

CHARLES H. BRYAN

Eighth Justice, November 24, 1854 - November 12, 1855

Upon leaving the Court Bryan resumed practice in Marysville. He continued to be an influence at the bar as well as in politics.

He remained in Marysville until soon after the discovery of the Comstock Lode in Virginia City. Several of the men who have been the justices of the Supreme Court of California went to the Washoe, as this part of Utah Territory was then called, but Bryan seems to have been the first of them, judging from the fact that he was admitted to the bar in Genoa in October, 1859. In fact, he was one of the very first men, regardless of calling or profession, to go there. After a short stay in Genoa, he went to Carson City, and from there to Virginia City. He prospered professionally, politically, and financially. He is reported to have had a hand in some of the big mining litigation, and in 1863 was elected to the constitutional convention of that year. The constitution proposed by this convention, however, failed of adoption when submitted to the people. Bryan made one of the most talked of speeches of his career in this convention. It is said that those who heard it in turn laughed and cried as he delivered it. For years men liked to quote its most sarcastic passages for the entertainment of their listeners.

Financially able to indulge himself, Bryan returned to California and went into horse-racing. He imported a famous race-horse by the name of Lodi. Things did not go so well for him in this field, however. He took to drinking and his money melted away. His money gone, he drifted back to Nevada. He never became his old self any more, however. His mental powers gave way in a manner that rendered him incapable of exacting and heavy professional responsibilities. Despite this, men did not entirely forget him, and

even after his advice could no longer be fully depended upon consulted him on their difficult problems.

Bryan died in Carson City, May 14, 1877. Death came from choking on a piece of beef as he was eating his dinner. He was not old in years. His remains were apparently interred at Lone Mountain Cemetery in Carson City. No marker or known record remains to bear witness of the fact. Apparently he left no estate to speak of. From the fact that the Carson City bar attended to his burial it would appear he had no family.

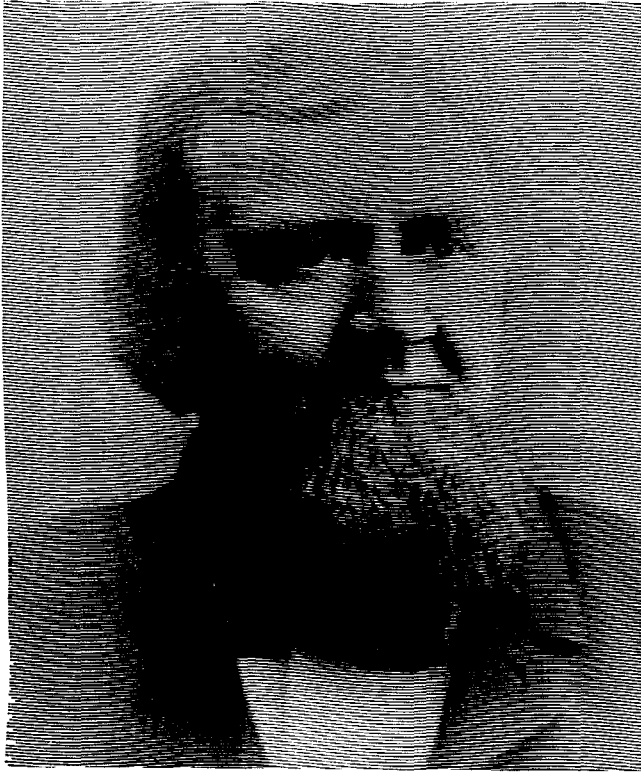
It is not known if any picture was ever made of Bryan, he being the only California Supreme Court justice of whom no picture has been found. It is said, however, that he so nearly resembled Bismarck in facial expression that he could well have sat for a picture or painting of the Iron Chancellor. His is said to have been a singularly expressive face. His hair was light brown, his eyes blue, and his skin fair. He was about five feet nine inches tall, of a firmly knit frame his first years in California, and weighed about a hundred and sixty pounds.³

Bryan's great gift was his power of speech. He possessed all the qualities adapting him for the role of advocate, with a good voice, an incomparable command of language, and an engaging, winning personality. While he achieved much in life, his accomplishments fell short of his abilities. But of whom may this not with equal truth be said!

FOOTNOTES

1. *Sacramento Record Union* (May 18, 1877), 2, col. 5. This account refers to Bryan as a native of New York.
2. *Alta California* (Nov. 25, 1854), 2, col. 1.
3. *Sacramento Union* (May 18, 1877), 2, col. 5.

THE CALIFORNIA JUSTICES



David S. Terry

by DONALD G. McNEIL

Some historians believe that Chief Justice David S. Terry lacked a judicial temperament. While on the California Supreme Court, he was imprisoned, tried, and convicted of stabbing a member of the Vigilantes; he killed a United States Senator in a duel. He fought in three wars, starting his military career at age thirteen. Terry advocated slavery, fought for the Confederacy, and fled to Maximilian's Mexico to avoid surrender.

He represented the notorious Sarah Althea Hill in her battles to establish that she was the wife rather than the paramour of William Sharon, the multimillionaire former United States Senator from Nevada. In the course of the proceedings, Terry married his client. In his joint role as husband and counsel, he knocked down a bailiff in the courtroom, threatened the court's representatives with a knife and served six months in jail for contempt. Later, embittered and enraged by the sentence, he slapped

the face of the judge who had sentenced him and was shot and killed by the judge's bodyguard. His widow spent forty-five years in an insane asylum.

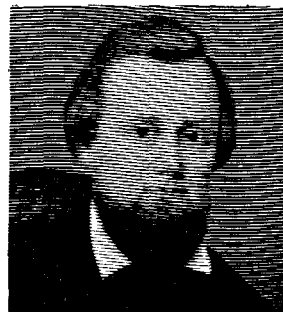
Yet Terry was an able lawyer, a judge of unquestioned integrity, a devoted husband and father, and a warm and loyal friend. He had in common with many distinguished figures the quality that no one could be neutral toward him. As a consequence, there are at least two conflicting versions of all of the major and most of the minor adventures of his action-crammed life.

Terry was born in Todd County, Kentucky, on March 8, 1823. Jefferson Davis, the president of the Confederacy, was born in the same county some fifteen years earlier. Terry's paternal and maternal grandfathers and great-grandfathers fought in the American Revolution. His parents were moderately wealthy farmers and slave owners.

When Terry was an infant, the family moved to Mississippi. In 1835 his parents separated because of his father's alcoholic addiction, and his mother and her four sons moved to Texas. Mrs. Terry apparently had the money; in Texas she acquired a 2,000-acre ranch and eighteen slaves.

Not long after their arrival, Terry's mother died. Terry was only thirteen and his elder brother, Frank, but fifteen. There were two younger boys, Aurelius Josiah and Clinton.

Terry's early education was in the common schools of Mississippi and Texas. His formal schooling ended at age thirteen when he enlisted in the Texas War of Independence. One of Terry's biographers claims that this thirteen-year-old private killed a Mexican soldier with a bowie knife,¹ but the story is generally discredited.²



David S. Terry



Cornelia Runnells Terry

Paintings in deYoung Museum, San Francisco

DAVID S. TERRY

Ninth Justice, November 12, 1855 - 1857

Fourth Chief Justice, 1857 - 1859

After the war Terry returned to the family farm for five uneventful years. In 1841 he went to Houston and commenced the study of the law in the office of an uncle, T. D. J. Hadley. In 1845 he took his oral examinations and was admitted to the bar. Apparently the most searching question asked by the examiners was whether he knew the price of oysters. Upon replying that he did not, he was informed that it would be his privilege to add to his store of practical knowledge by playing host to his examiners at a local restaurant.

Terry commenced the practice of the law at Galveston in association with his uncle and his elder brother, Frank. Early in his career he received his first political appointment as collector at Camargo. He resigned the post to enlist in the Texas Rangers in the war with Mexico. He served for three months and took part in the battle of Monterrey under General Taylor. After the war, he returned to his practice in Galveston.

In 1849 Terry decided to join the gold seekers in California. His decision was in part the product of a misunderstanding with Cornelia Runnels, an attractive, cultivated young woman whom he had known since childhood, and whom he later married.

Terry was extremely popular in Texas. His convictions that slavery was divinely ordained and that the dueling code was the proper solution of real or fancied slurs upon one's honor were the views of the community. His favorite weapon, the bowie knife, was equally popular with his Texas colleagues. Had he remained in Texas he might have achieved equal fame and escaped the dark days which were to follow.

Terry arrived in California in 1849 with a group of former Texas Rangers. He was a gold miner in Tuolumne and Calaveras Counties for a short period, then went to Stockton and opened a law office. Stockton reminded Terry of Texas. This alone should have been a sufficient indictment of the city; Terry added in a letter to Cornelia Runnels, "It is difficult to imagine a more disagreeable location during the winter months." The chief attraction of Stockton for Terry was the high percentage of Southerners in its population.

In 1850 Terry ran for mayor of Stockton and was defeated. By 1851, he had a large practice extend-

ing into the neighboring counties, and he also was engaged in farming and business ventures.

While Terry was well regarded in Stockton and elsewhere throughout California at this time, he was involved in a number of incidents which later were included in the charges made against him by the San Francisco Vigilantes. On Christmas Day of 1850, Terry struck one M. R. Evans of Stockton over the head with a pistol. It was, however, only "a small brass pocket pistol and could not have hurt Evans much."³ There is evidence that Evans was interfering with the local sheriff in making an arrest and that Terry went to the sheriff's assistance.

Another incident occurred in the courtroom. Terry was trying a case. Roadhouse, the defendant, interrupted Terry's argument several times and then called Terry a liar. Realizing the seriousness of the insult, Roadhouse rose for the fray and Terry stabbed him. It was, however, a slight cut inflicted with a small knife. Terry claims that his fine for contempt of court was only one dollar. There is another report that he was fined fifty dollars. It is not a matter about which historians should haggle; for a courtroom stabbing, it was a bargain at either price.

For a man of Terry's physique, a bowie knife may appear to be a strange weapon. Terry was six foot three inches tall, weighed in excess of 220 pounds and was broad-shouldered and powerfully built. Undoubtedly, however, he was less robust when his military career commenced at age thirteen. In any case, the bowie knife was highly regarded by Texans.

Still another altercation occurred in San Francisco. *The Pacific Statesman*, a newspaper, published an article which Terry considered defamatory. J. H. Purdy, the publisher, refused to retract. Terry hit him over the head with a small cane. Purdy, unimpressed, seized the cane, broke it, and grappled with Terry. Terry drew his knife, but contented himself with rapping Purdy's skull several times with the handle. Terry was prosecuted and paid a \$300 fine.

Aside from these minor skirmishes, Terry devoted himself to his practice and business interests. He resumed his correspondence with Cornelia Runnels and in 1852 returned to Texas to propose to her. His courtship was successful, and he brought his new bride to California early in 1853.

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At the time of their marriage, Terry was twenty-nine and Cornelia twenty-three. She was a charming, well educated woman who commanded great affection and respect throughout her life. The best record of the finest side of Terry's character appears in their correspondence. Unquestionably Terry was a loving husband and a devoted father. The Terry's had six children. Despite the violence of his career, Terry outlived his wife and all but one of their children.

Terry became a candidate for the Supreme Court of California in the September election of 1855. He and Hugh C. Murray were the candidates of the Know Nothing Party, a short lived but temporarily successful organization. When Terry was elected, he was only thirty-two, but he was not the youngest man on the Court. Murray had been appointed to the Court at age twenty-six, was Chief Justice at thirty, and died when he was thirty-two. Heydenfeldt, the oldest man on the Court, was thirty-nine. J. Neeley Johnson, the then Governor of California, had been elected when he was twenty-seven or twenty-eight.

The unparalleled spectacle of the imprisonment and trial of a Supreme Court justice by a wholly illegal organization occurred in Terry's first year on the Court. The San Francisco Vigilantes had not been active for a number of years. In 1856, however, there was great public dissatisfaction with lack of law enforcement and political corruption in the city.

The most vociferous critic of the local scene was James King of William, editor of the *Daily Evening Bulletin*, considered by some to be a high-minded reformer and by others as the leading exponent of political blackmail. His paper ran a sensational article exposing James P. Casey, a local politician, as a former denizen of Sing Sing. Casey sought out the editor and shot him on the street. The Vigilantes were organized under William T. Coleman, a local businessman. They seized, tried, and hanged Casey and an Italian gambler named Cora, who had shot another prominent local citizen after a quarrel.

Terry was bitterly opposed to kangaroo court justice, even when its proponents were respected citizens with presumably worthy motives. Terry was not alone in his sentiments; they were shared by Governor Johnson, by William Tecumseh Sherman, then a San Francisco businessman, and by other leading figures in the state. The Vigilance Committee included in its

ranks, however, many distinguished San Francisco citizens, was well organized and well armed and at its zenith had 8,000 members enrolled. Governor Johnson tried to persuade the Vigilantes to disband, but without success. He tried, but failed to enlist the aid of the federal government. He appointed Sherman head of the state militia with orders to raise a force which could compel the Vigilantes to disband. Sherman was, however, unable to enlist a force which he considered adequate and he resigned in disgust.

The failure of the force of law and order was completed when the Vigilantes seized a number of ships bringing arms to the militia from Sacramento. J. R. Maloney was in charge of one of the vessels, the schooner *Julia*. Maloney and his subordinates were first released by the Vigilantes, but the committee determined to bring Maloney back for questioning. Sterling A. Hopkins was ordered to arrest him. Hopkins found Maloney in the office of Richard P. Ashe, a federal naval agent. Terry and a number of others who opposed the Vigilantes were visiting Ashe at the time. Hopkins decided to seek reinforcements.

On returning, Hopkins and his party encountered the Maloney-Ashe-Terry group on the sidewalk. A man-to-man melee ensued. Terry had a pistol and Hopkins attempted to wrest it away from him. A gun discharged accidentally. Terry instantly drew his bowie knife and stabbed Hopkins in the neck, severing an artery and inflicting a serious wound.

Terry and his party continued to the armory, which was still in the hands of the state forces. The Vigilantes sounded the alarm and the streets filled with armed men. The Vigilantes promised protection to all if Terry and Maloney surrendered. They did and were taken to committee headquarters and imprisoned. The Vigilantes then mopped up the remaining sympathizers for the cause of law and order, taking 200 prisoners and 1,000 stands of arms.

Terry's friends and supporters bent every effort toward his speedy release. The Governor sought the aid of Captain Boutwell, commander of the U. S. Navy sloop, *John Adams*, which was stationed in the bay. Boutwell was sympathetic and wrote the committee asking for Terry's release. The committee, however, went to Captain D. G. Farragut, Boutwell's senior, and persuaded him that the matter was no concern of the federal government.

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Senator Sam Houston of Texas presented on the floor of the United States Senate a resolution commending Terry, which had been passed by the Texas Legislature. Some debate on Terry's incarceration followed, but the federal government took no action.

On June 27, 1856, less than a week after his imprisonment, Terry's trial commenced. The indictment charged assault with a deadly weapon with intent to kill Sterling A. Hopkins. In addition, Terry was charged with various breaches of the peace, including the attacks on Evans, Roadhouse, and Purdy. Forty citizens testified for the prosecution and eighty for the defense.

Terry's statement in his own defense is a literate, temperate, and moving document.⁴ In defense of carrying arms in court, Terry said:⁵

A great deal is attempted to be made of the fact that I was armed, and made the attack in a *Court House*. If any of you lived in California as early as 1851, you will remember that the carrying of arms was an almost universal custom. You will also know that Stockton had not the most quiet and orderly reputation; and that a Justice's Court, in those days, was not a place of any great sanctity. I know that if a lawyer was in the habit of doing his duty faithfully, he was liable at any time to be attacked, for calling things by their proper names. I was not accustomed to permit myself to be governed, in the discharge of my duty to clients, by the character of the other party, or the probability of being attacked by him. I have, on more than one occasion, been compelled not only to go armed into a Court House, but to have a man stand behind me, whilst arguing a case, to prevent an attack in the rear. On this occasion I was armed, because I thought that arms were necessary for my defense, in a community, almost all of whom were armed; and because I had frequently, in the course of my practice, been compelled to speak plainly of desperate characters, and I was liable to be called to account by them, at any moment; and I always thought that the best way of preventing an attack was to be prepared to repel it. The assault was committed in the Court House, or rather in the Justice's office, because the provocation was given there. If the character of the place did not shield me from insult, I saw no reason why it should shield the aggressor from punishment.

In explanation of his personal code of honor he said:⁶

This is the end of the specifications, as to my violent and turbulent habits; and what do they prove? That I will promptly resent a personal affront. One of the first lessons I learned was, to avoid giving insults, and to allow none to be given to me. I have acted, and expect to continue to act, on this principle. I believe no man has a right to outrage the feelings of another, or attempt to blast his good name, without being responsible for his actions. I believe, if a gentleman should wound the feelings of any one, he should at once make suitable reparation, either by an ample apology, or, if he feels

that circumstances prevent this—that is, if he made charges which he still thinks true,—should afford him the satisfaction he desires. I know that a great many men differ with me, and look with a degree of horror on any one entertaining such sentiments. My own experience has taught me, that when the doctrine of personal responsibility obtains, men are seldom insulted without good cause, and private character is safer from attack; that much quarrelling and bad blood, and revengeful feeling, is avoided.

Fortunately for Terry, Hopkins made a complete recovery. Terry was convicted of resisting the officers of the committee and of the assault upon Hopkins. The remaining charges were dismissed. While the judgment expressed the opinion of the committee that Terry should resign from the Court, the only order issued was that he be discharged from custody. This, however, was a compromise. The board of delegates of the Vigilantes favored banishing Terry from the state under penalty of death if he returned.

During the six weeks of Terry's imprisonment, the California Supreme Court was without power to act. Heydenfeldt was in Europe, leaving the Court without a quorum.

While Captain Farragut had refused to take action to free Terry, he did order Boutwell to receive Terry aboard the *John Adams* for his own safety upon his release. Terry was then transferred to a boat which carried him to Sacramento, where he received an impressive welcome. There was a torchlight parade, a marching band, and assorted speechmaking. A similar celebration awaited him in Stockton, where 2,000 citizens paraded in his honor.

Terry served on the Court from 1855 until 1859. He became Chief Justice upon the death of Murray in 1857. Peter H. Burnett, Stephen J. Field, and Joseph G. Baldwin were members of the Court at various times during Terry's service. Field is generally recognized as one of the ablest judges ever to serve on the Court. Terry, however, was not an admirer of Field. Terry once said, "Field is an intellectual phenomenon. He can give the most plausible reasons for a wrong decision of any person I ever knew. He was never known to decide a case against a corporation. He has always been a corporation lawyer and a corporation judge, and as such no man can be honest."⁷ (The conclusions are Terry's and do not necessarily represent the views of the writer or of the State Bar of California.)

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Terry wrote over two hundred opinions in his four years on the Court. His brevity must have delighted the lawyers and the taxpayers of the day, for his opinions averaged about a page in length. Two of his opinions have been published in casebooks (*Smith v. Compton* (1855) 6 Cal. 24 in Corbin's *Cases on Contracts*, and *Hyman v. Reed* (1859) 13 Cal. 445 in de Sloveer's *Cases on Interpretation of Statutes*).

Terry's opinions reflect a strong belief in the doctrine of separation of powers (*Johnson v. Fall* (1856) 6 Cal. 359; *Billings v. Hall* (1857) 7 Cal. 1, 19). He attached great weight to the verdicts of juries based on observation of the witnesses even in equity cases where the jury verdicts were not binding. (*Ritter v. Stock* (1859) 12 Cal. 402.)

Terry's greatest attribute as a judge was his personal integrity. Despite the bitter attacks on Terry occasioned by his unpopular views and tempestuous temper, his critics did not impugn his honesty. This distinction was not shared by all of his colleagues on the Court.

In 1859, Terry's last year on the Court, he fought the most famous duel in California history. His antagonist was David C. Broderick, United States Senator from California. Although Terry and Broderick were both members of the Democratic Party, they had about as much in common as G. Mennen Williams and Herman Talmadge. Broderick was a product of Tammany Hall; the other Senator from California, William M. Gwin was, like Terry, formerly from the Deep South.

In 1859 Broderick and Gwin were engaged in a bitter struggle for control of the Democratic Party in California. Terry was a candidate for re-election to the Court. In a speech before the party convention in Sacramento, Terry attacked not only the Republicans but Broderick and his followers. Terry failed to win the support of the convention in his bid for re-election; W. W. Cope was the party's choice.

Broderick read Terry's speech in a newspaper while having breakfast in the International Hotel in San Francisco. Duncan W. Perley, a former law partner of Terry's, was at a nearby table. Broderick became angered by the report of the Terry speech and voiced his irritation to Perley. Broderick concluded by stating, "I have hitherto spoken of him as an honest man—as the only honest man on the bench of a miserable, corrupt Supreme Court—but now I find I

was mistaken. I take it all back. He is just as bad as the others."⁸

Much stronger slurs had been exchanged by Broderick and Gwin on public platforms throughout the state. Terry, however, prized his reputation above all else. Broderick had announced that he would accept no challenges during the campaign, so Terry waited two months before making a written request for a retraction. There was an exchange of correspondence but Broderick refused to retract, and Terry issued his challenge.

Broderick had a reputation as a marksman. He had the choice of weapons and selected pistols. The site was a farm on the edge of Lake Merced on the San Francisco-San Mateo County line not far from the ocean. All of the formalities of the dueling code were observed in the arrangements. The duel was set for September 12, 1859, at 5:30 a.m.

News of the forthcoming encounter spread rapidly and a large number of spectators were on hand. Among them was the San Francisco chief of police, who promptly arrested the principals. They were released the same day for lack of evidence of the commission of a misdemeanor. The duel was rescheduled for the following morning.

This time there were no interruptions. Although sixty or seventy spectators attended, the chief of police stayed away.

In accordance with regulations suggested by Broderick, the parties faced each other ten paces apart. The judge inquired, "Gentlemen, are you ready?" They replied in unison, "Ready." "Fire," said the judge. Broderick fired first, but his bullet plowed into the ground as if the pistol had fired prematurely. Terry's shot went home; Broderick fell with a bullet in his chest and died three days later.

By the terms of the agreed rules, each party had brought along a pair of dueling pistols and the toss of a coin resulted in Terry's pair being used. It has been charged that one of the pistols had a much more sensitive trigger than the other, that Terry knew this and Broderick did not, that as a consequence the pistol discharged before Broderick planned to fire it, and that Terry then shot to kill in cold blood. The view has also been expressed that Terry fought the duel with Broderick for political reasons and with the intention of eradicating an enemy of the pro-South-

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ern wing of the party. We prefer to accept the views of modern scholars, A. Russell Buchanan⁹ and J. Edward Johnson¹⁰ that the duel was waged fairly between equally experienced adversaries and that Terry had no other motive than to protect his good name. The duel was arranged with all of the formalities of a royal coronation. The pistols were carefully inspected beforehand. Terry's pair was chosen by the toss of a coin.

Unquestionably, however, the rumor that the fight was unfair seriously damaged Terry's reputation. Broderick's death also caused great public revulsion against the practice of dueling. Broderick's funeral oration was delivered by Colonel E. D. Baker, a gifted speaker who virtually succeeded in canonizing the wily politician.

Since dueling was a crime, Terry was charged in both San Francisco and San Mateo Counties. He secured a change of venue to Marin County on the ground that he could not receive a fair trial in the other counties. The case did not come on for trial until July 6, 1860, more than eight months after the duel. Terry was then no longer a member of the Supreme Court since his resignation, written before the duel, had been forwarded immediately thereafter.

The case was set for trial at San Rafael. Judge James H. Hardy, who presided, appears to have looked upon the prospect of trying a former Supreme Court justice with all the enthusiasm that the medical profession exhibits towards malpractice actions. The witnesses were en route across San Francisco Bay on the appointed morning. The jury was chosen in twenty minutes, and the district attorney made a short opening statement. No witnesses had then appeared, but Terry's counsel demanded that the trial proceed. The case was submitted to the jury, and the court directed the jury to find the defendant not guilty for a lack of evidence. When the witnesses arrived, the trial was history.

Terry's acquittal, of course, did not solve his problems. The sensational attacks on him in the press not only blackened his reputation, but solidified public opinion against dueling and slavery. It seemed apparent that Terry had no future in California.

Terry departed for Washoe County, Nevada, where a vast silver deposit had attracted a horde of miners. He set up a law practice and was soon engaged in

major mining litigation. His work, however, was unrewarding financially, and he sorely missed his family, who remained in Stockton because of its superior educational facilities.

Sometime in 1862 Terry returned to Stockton. In February, 1863, he left San Francisco for Mexico en route to fight for the Confederacy. There are reports that Terry had worked actively for the Confederate cause while in Nevada. Terry had lost two brothers in the war, both of whom were members of the Texas Bar. Undoubtedly, Terry would have been in the struggle sooner had it not been for his responsibilities to his wife and children.

Terry fought in at least one battle and was wounded in the shoulder. He formed a regiment and was commissioned a colonel. At the close of the war, he was made a brigadier general.



Sarah Althea Hill Terry

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Terry's wife and family followed him south near the end of the war. It was a harrowing journey. Terry's fourth son perished on the way, and Mrs. Terry was robbed twice while crossing Mexico.

Terry was unwilling to remain in conquered territory. He persuaded a force of over six hundred men to join him in crossing the border to try to make a new life in Maximilian's Mexico.

The Terry party, however, was captured by a guerrilla, Juan N. Cortina, who commanded a superior force. Terry and a small group were allowed to go to Monterrey. Other Southerners, including Terry's old friend, William M. Gwin, former United States Senator from California, attempted to persuade Maximilian to permit large scale colonization of Mexico by expatriated Southerners.

Terry undertook a sheep raising venture in Mazatlan which failed and finally settled in Jalisco to raise cotton. Mrs. Terry returned to California to place their children in school. Terry became convinced that Mexico offered no prospects save "anarchy, bloodshed, oppression and outrage."¹¹ He determined to return to the United States to make a future for his children.

In July of 1868 Terry returned to his home in Stockton. For six months he struggled to rebuild his practice, but found that prejudice against him was still strong. His financial resources were meager and a new move seemed advisable.

Early in 1869 Terry set out for White Pine County, Nevada, scene of the latest silver strike. Again he attracted many clients but little cash. The rich silver deposits turned out to be relatively shallow. After about a year, Terry rejoined his family in Stockton.

In the early 1870's Terry rebuilt his practice and regained his position as a leader of the community. Two of his sons were in high school and the third in grammar school. This relatively uneventful period was one of the happiest for the Terry family. It was not, however, unmarred by tragedy. In 1873 Terry's son, Dave, was accidentally killed while cleaning a revolver.

Terry gradually returned to politics and in May, 1878, he was elected a delegate to the constitutional convention. He played a prominent part in the proceedings. He introduced a section making corporate directors personally liable for all funds misappropri-

ated or embezzled by officers of the corporation. He was active in the adoption of a provision for the taxation of all forms of property. Needless to say, he had been elected to the convention by the Democratic Party.

Terry also campaigned actively for the adoption of the Constitution. His skill as a phrasemaker is evidenced by the following excerpt from one of his speeches, "Let us have a new deal and a square one!"¹²

Sarah Althea Hill was a beautiful, resourceful young lady with a passion for violence surpassing Terry's. She was also noted for an all absorbing interest in finance.

Sarah was born in Missouri. Her parents died when she was quite young and left her a small fortune. She came to California in 1870 with an uncle and a brother. After a few years of living with relatives, she took up residence in an Oakland hotel.

Sarah managed her own financial affairs, visited brokerage houses with some frequency and was moderately successful as a speculator. In 1880 Sarah met the former United States Senator from Nevada, William Sharon. Sharon had noticed her in his brokerage office and made her acquaintance at his bank. Since Sharon had accumulated a fortune estimated at thirty million dollars, they had strong mutual interests.

When Sarah met Sharon, he was about sixty and she was thirty. He was a widower with several children; one daughter married Lord Fermor-Hesketh. Age had not dulled Sharon's interest in attractive young ladies, and he was strongly attracted by Miss Hill. He suggested to her that he would be glad to pay her \$1,000 a month for financial advice and other considerations to be rendered in Sharon's quarters at the Palace Hotel.

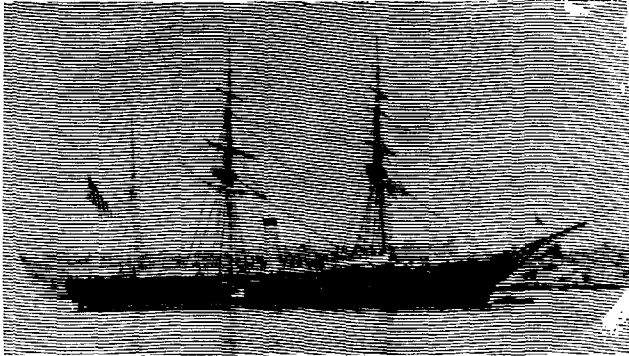
Sarah claims to have rejected this offer on the ground that it was against public policy, but to have indicated a willingness to look favorably upon a proposal of marriage. She later testified that Sharon agreed to this on the condition that it be kept a secret. According to Sarah, the marriage was formalized by written contract.

In any case, Sarah took up residence at the Grand Hotel, which connected with the Palace Hotel by a

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covered passageway. For about a year they lived together either as man and wife or as common law associates. Sharon paid her rent and gave her a handsome monthly allowance.

In 1881 Sharon decided to terminate the relationship. Sarah was unwilling to give him up, and some stormy incidents followed. She once hid behind the bureau in Sharon's room while he was entertaining another young lady. Sharon sought to have Sarah evicted from the Grand Hotel, and when she proved obdurate, he had the carpets ripped from the floor and the doors removed from their hinges.

Sarah was convinced by this inhospitable act that the chances of a reconciliation were remote; she determined to litigate. Unfortunately, she sought advice from a newspaperman, William M. Neilson, rather than a lawyer. Neilson persuaded her to file charges of adultery against Sharon, ostensibly to discourage him from marrying another young lady of whom he had become enamored. Sharon countered with criminal proceedings against Sarah and Neilson,



Terry's Home in Stockton

charging forgery, perjury, and conspiracy. Sharon also filed an equity action in federal district court predicated upon diversity of citizenship and seeking an adjudication that the purported marriage contract was a forgery (*Sharon v. Hill* (1885) 26 Fed. 337).

Sarah countered by filing a state court action to establish the marriage, for a divorce, and for her share of the community property. The legal battles arising from the Hill-Sharon controversy occupied the time of some thirty judges in courts ranging from the justice of the peace to the Supreme Court of the United States. Sharon had been dead almost five years when the litigation terminated in June of 1890.

Terry was first retained in March, 1884, to assist in the trial of the state court action before Superior Court Judge Jeremiah F. Sullivan of San Francisco, one of the founders and first presidents of the San Francisco Bar Association. George W. Tyler was then Sarah's chief counsel and his zeal for her cause is evidenced by his having been fined \$500 for contempt for an insulting and threatening letter he wrote to the grand jury which had indicted Sarah and Neilson (*Matter of Tyler* (1884) 64 Cal. 434). In addition to Terry, Tyler was assisted by his son, W. B. Tyler, George F. Flourney, Walter H. Levy, and R. P. Clement. W. H. L. Barnes and Oliver P. Evans were Sharon's chief attorneys.

Sarah's battery of legal advisers all seemed prosperous and it is generally accepted that the litigation was financed by the notorious Mammy Pleasant in exchange for a contingent interest.

The trial lasted from March until October of 1884. There were scores of witnesses and, according to Judge Sullivan, "an amount of perjury rarely if ever paralleled in the jurisprudence of the State."¹³ An order was made that witnesses be searched for guns before coming into court. Great crowds were attracted to the proceedings, and eventually it became necessary to exclude spectators to maintain order.

Terry delivered the final argument for the plaintiff. It occupied five full court days and would make a printed book of over 225 pages. It was published in full in the *San Francisco Examiner* under such headlines as "Terry Throws Terrible Thunderbolts." He referred to Sharon as the "burro of the Palace Hotel"

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and a "miserable, lecherous, selfish old scoundrel." It was, however, a masterful presentation of a complicated case and established Terry as one of the great trial lawyers of his era.

The marriage contract introduced at the trial was written entirely by Sarah except for Sharon's signature and the place and date. In it Sarah declared herself to be Sharon's wife and agreed to keep their marriage a secret. Sharon's signature was near the top of the second page, lending support to his claim that he had autographed a piece of blank paper and Sarah had filled in the rest. Sarah also produced several letters from Sharon addressing her as "Dear Wife." Sharon claimed that these were forgeries.

Apparently the evidence that the court found most convincing was the fact that Sharon had invited Sarah to his daughter's wedding and introduced her to his family and friends. No other female intimate associate of Sharon's (and there were many) could make this claim.

On Christmas Eve, 1884, Judge Sullivan announced his decision in favor of the plaintiff. At the moment of his greatest legal triumph, Terry also sustained his greatest personal loss. His wife died the same day.

In February of 1855, the decree was entered, and Sarah was given \$7,500 as lump sum alimony and monthly payments of \$1,500. Attorneys' fees were allowed in the amount of \$55,000.

In the federal court proceedings, matters had not gone as well. Sarah's demurrer was overruled (*Sharon v. Hill* (1884) 20 Fed. 1). Her motion that the proceedings abate was denied. (*Sharon v. Hill* (1884) 22 Fed. 28.) It was held that Sharon's Nevada citizenship had been sufficiently alleged (*Sharon v. Hill* (1885) 23 Fed. 353). Finally, the federal court ruled that the marriage contract was spurious (*Sharon v. Hill* (1885) 26 Fed. 337). This favorable ruling for Sharon came a month after he died, denouncing Sarah and directing that no effort be spared to defeat her claim.

On January 7, 1886, Sarah and Terry were married. He was then sixty-two and she almost thirty years younger. The marriage alienated many of Terry's friends; his surviving son, Clinton, refused to attend the wedding. Nevertheless, there is every indication that Terry was as devoted to his second wife

as to his first, and Sarah seemed equally happy in her choice.

In January, 1888, the California Supreme Court affirmed Judge Sullivan in an appeal taken on the judgment roll alone (*Sharon v. Sharon* (1888) 75 Cal. 1). Meanwhile Sharon's attorneys pressed the advantages they had gained in the federal court. After Sharon's death, they commenced proceedings to revive the action on behalf of the executors in order to force a surrender of the marriage contract for cancellation. Terry demurred. The ruling on the demurrer was set for September 3, 1888, before the circuit court. Stephen J. Field read the opinion.

At an earlier stage of the proceedings, Sarah had been interrogated before an examiner. On this occasion Sarah had displayed a pistol and advised Sharon's attorneys that she could "hit a four bit piece nine out of ten times" and that they should take this into consideration in determining whether or not to accord her the deference and fair play which she deserved (*Sharon v. Hill* (1885) 24 Fed. 726, 728).

Since Terry was also considered capable of presenting a security problem, Field instructed United States Marshal John C. Franks to be prepared for any eventuality. Franks stationed a number of deputies about the courtroom, including David Neagle. Field had not proceeded very far in the reading of his opinion when the astute Mrs. Terry determined that his ruling would be adverse. She rose and inquired, "How much did you get for your decision?" Field ordered the marshal to remove her from the courtroom. To do so, Franks had to pass in front of Terry, who demanded that he get a written order. The marshal ignored him, so Terry punched him in the mouth, dropping him to the floor minus one tooth. The deputies closed in on Terry and Sarah was dragged from the courtroom, kicking, cursing, and screaming. She was locked in the marshal's office and called for Terry. He took his bowie knife and threatened to force his way to her side. He surrendered the knife and was permitted to join his wife.

Sarah then asked for her handbag, which she had left in the courtroom. The marshal examined it before sending it to her and found that it contained a loaded revolver.

That afternoon the judges convened and sentenced Terry to six months in the Alameda County jail.

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Sarah received thirty days. The contempt sentences were upheld by the United States Supreme Court (*Ex Parte Terry* (1888) 128 U.S. 289). The Terrys served their full sentences.

To complete the dismal decline in the Terry fortunes, the California Supreme Court, in an appeal from Judge Sullivan's denial of a new trial, reversed him, holding that the evidence did not support the findings that there was a valid marriage (*Sharon v. Sharon* (1889) 79 Cal. 633). The Terrys attributed most of their misfortune to Field, and Terry threatened to horsewhip him when released. As a consequence of this and other threats, David J. Neagle was assigned as Field's bodyguard.

On August 13, 1889, Field took a train from Los Angeles to San Francisco. At 2 a.m. Terry and his wife boarded the train at Fresno. Terry was due in court the following day.

At 7:15 a.m. the train stopped at Lathrop for breakfast. Field and Neagle were seated in the dining room when Terry and his wife appeared at the door. Mrs. Terry saw Field and returned to her car. Terry approached Field from behind and slapped his face several times. Neagle leaped up and ordered Terry to desist. When Terry ignored him, Neagle shot Terry through the heart.

Sarah entered the dining room and prostrated herself on Terry's body. After a wild outburst of grief, she urged the crowd to lynch Field. Both Field and Neagle were arrested for murder, but both were discharged.

Almost a year after Terry's death, the California Supreme Court held that the federal adjudication that the marriage contract was spurious was controlling because that action had been filed first (*Sharon v. Sharon* (1890) 84 Cal. 424). By this time Sarah was waging a bitter battle with her stepson, Clinton, over Terry's estate. She exhausted her funds and lived on the generosity of her friends.

In 1892, less than three years after Terry's death, proceedings to declare Sarah Althea Hill Terry insane were commenced by her old friend, Mammy Pleasant.

Sarah was committed to the state hospital for the insane in Stockton. There she remained until her death some forty-five years later on February 15, 1937.

FOOTNOTES

1. A. E. Wagstaff, *Life of David S. Terry* (S. F., 1892), p. 40.
2. Charles S. Potts, "David S. Terry, The Romantic Story of a Great Texan," *Southwest Review*, XIX (1934), 297.
3. *The S. F. Herald* (July 1, 1856).
4. Charles L. Case, *Trial of David S. Terry* (S. F., 1856), pp. 24-28.
5. *Ibid.*, p. 27.
6. *Ibid.*, pp. 27-28.
7. J. Edward Johnson, *David S. Terry*, Manuscript, p. 95.
8. A. Russell Buchanan, *David S. Terry of California, Dueling Judge* (The Huntington Library, 1956), p. 95.
9. *Ibid.*, pp. 83-110.
10. Johnson, *op. cit.*, pp. 59-77.
11. October 11, 1867, Letter from Terry to Mrs. Terry.
12. Buchanan, *op. cit.*, p. 188.
13. *S. F. Examiner* (Dec. 24, 1884).

A NOTE ON SOURCES

The principal source of this biography is the exhaustive manuscript of J. Edward Johnson. A. Russell Buchanan's excellent recent work, *supra* n. 8, was also a valuable source.

There is a wealth of material available on Terry, only a portion of which is here noted. J. Wharton Terry's Notes Prepared for Judge Ernest and Notes for Carl I. Wheat (manuscripts in the Bancroft Library, U. C.) are excellent for correcting the inaccuracies in Wagstaff, *supra* n. 1.

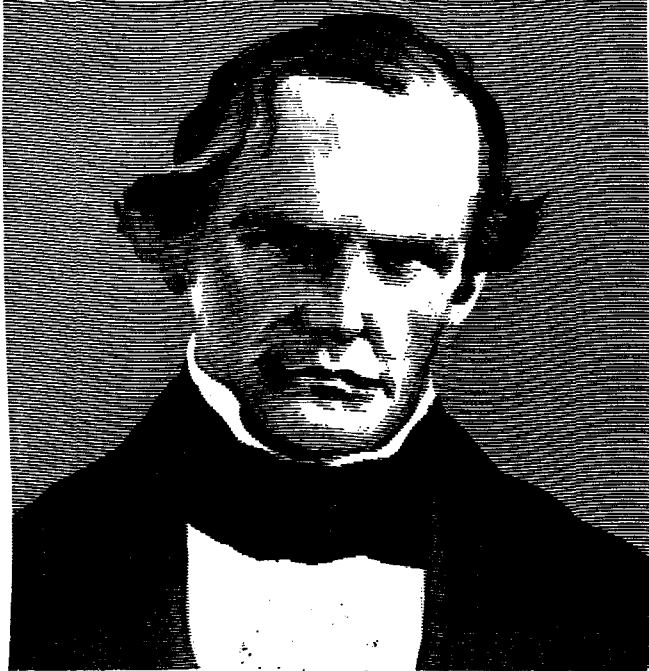
The activities of the Vigilance Committee which tried Terry are treated at length in H. H. Bancroft's *Popular Tribunals* (S. F., 1887) and Theodore H. Hittell's *History of California* (S. F., 1898). Carl B. Swisher's *Stephen J. Field, Craftsman of the Law* (Washington, 1930) is a valuable work, since Terry's bitterness toward Field was such a major factor in his life.

David C. Broderick, who also loomed large in the Terry saga, is the subject of Jeremiah Lynch's *A Senator of the Fifties* (S. F., 1911). See also John Currey, *The Terry-Broderick Duel* (Washington, D. C., 1896) and Carroll Douglas Hall's *The Terry-Broderick Duel* (S. F., 1939) for this phase of Terry's story.

The Sharon litigation is treated in *Bonanza Inn* (New York, 1939) by Oscar Lewis and Carroll D. Hall. *Mammy Pleasant* (New York, 1923) by Helen Holdredge supplies significant local color.

The San Francisco newspapers are, of course, invaluable.

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Peter H. Burnett

Peter Hardeman Burnett was born in Nashville, Tennessee, November 15, 1807. His father, George Burnet (Burnett added an extra t to the family name), came to Nashville while it was still a small village and built several of its first log and frame buildings. Burnett's forebearers on both his father's and mother's side were Virginians. When Burnett was about four, his family moved on a farm near Franklin, in Williamson County. Six years later they moved to Howard County, Missouri. It was when they moved to Missouri that Burnett was introduced to the pioneer life which was to constitute such a great part of his career. Five years later his father took up a hundred and sixty acres of new land near Liberty and they moved there. Life for them was extremely simple these years. Going in for dress was considered against the spirit of the gospel by reason of fine clothing being beyond the means of most of the people, and in the summers many of the grown people as well as the boys and girls went barefooted. Much of the diet consisted of game, and a great deal of the commerce related to wild productions, as skins, beeswax, honey,

etc. Burnett's extensive writings during his later years give much about himself, but he never mentions how he received his elementary education. There were probably common schools of some kind in the vicinity of his homes where he acquired the rudiments.

In 1826 Burnett returned with an uncle to Tennessee. He first obtained employment in a hotel at Bolivar at a hundred dollars a year. Burnett was very selfconscious in connection with his poverty and lack of clothes when he returned to Tennessee. He fancied he was regarded as unsophisticated. He worked in the hotel about six months whereupon he procured employment in a store operated by a Methodist minister about ten miles from Bolivar.

While working in the little store, he married. He was then not quite twenty-one and his bride sixteen. In 1829 he bought the store, giving notes. The venture did not work out successfully for him. In 1830 or 1831 his wife's folks were moving to Liberty, Missouri. Burnett decided to send his wife and child along, with him to follow a little later when the business should be wound up. He also commenced the study of the law at this time. Closing out his business proved slow work. He did not join his family in Missouri until April, 1832. He speaks of the long separation from his wife at this time as one of the severe ordeals of his entire life.

Burnett was poorer, if anything, when he returned to Missouri. He procured employment in a store in Liberty at four hundred dollars a year. He also found time to resume the study of the law, and in 1833 was admitted to the bar. He did not enter upon the practice, however, but was taken in by James M. and J. L. Hughes in their mercantile business at Liberty. He also worked on a local paper called *The Far West*. In 1836 he and John Thornton took over the Hughes mercantile business. After a couple of years the business failed, leaving Burnett in debt some fifteen thousand dollars, a sizeable sum for him.

In 1838 Burnett read the Missouri statutes anew and took up the practice. The time was propitious for doing so. With the expulsion of the Mormons from Missouri there arose a great deal of litigation. He represented Joseph Smith and other Mormon leaders in connection with some of their difficulties. It was

PETER H. BURNETT

Tenth Justice, January 13, 1857-October 2, 1858

Resigned October 13, 1857, to permit appointment of Field for short term

Reappointed October 14, 1857, succeeding Murray who had died, and served to October 2, 1858

about this time that he was appointed one of the five commissioners who selected Columbia as the site of the state university.

In 1840 he was appointed district attorney for a newly organized judicial district comprising Clinton, Andrew, Buchanan, Holt, and Platte Counties, whereupon he moved to Platte City. A little later he moved to Weston in the same county.

In 1843 Burnett went with his family to Oregon. His family at this time consisted of himself, his wife, and six children. The white population of Oregon was more than doubled when Burnett's party of two hundred and sixty-seven people arrived. They settled near Fort Vancouver. The first rudiments of a government had been set up in Oregon as Burnett's company was crossing the plains the summer of 1843. Burnett became a member of the Oregon Legislature the following year and was elected the chief judge. He had a hand in amplifying the laws of the territory in 1844. He practiced some law in Oregon the five years he lived there, but the greater part of his time was given to farming. His sojourn in Oregon constitutes one of the most interesting periods of his interesting life. At one time his family ran completely out of food. His wife saved the day by showing him where some volunteer potatoes were growing among some grain. He ran out of shoes and could not procure others. He went barefooted for some time. He did not mind this so much when he was more or less alone. Naturally he was reticent about it in public places. He did not permit this to deter him from attending such public meetings as he felt it his duty to participate in, however. As everybody was in more or less the same condition, nobody complained. Burnett speaks of the group he lived with in Oregon as the happiest community he ever saw.

In 1848 Burnett saw a letter from former Governor Boggs of Missouri, whose handwriting and signature he knew, then in California, telling of the discovery of gold in California. He thereupon came to California, leaving his family in Oregon. As he was leaving Oregon a regular territorial government was being inaugurated. After he had been in California some time, he received a commission from the President of the United States appointing him a justice of the territorial Supreme Court, which, of course, he declined by reason of having left the territory. He mined for a number of weeks on the Yuba River and then went

to Sutter's Fort and became attorney and agent for John Sutter, making good progress financially. His family came to San Francisco in June, 1849. One of his daughters being in poor health they moved to San Jose, which, with Alviso, continued to be their home for a number of years. During this period the military governors continued the Mexican judicial system and Burnett was named a justice for the Superior Tribunal—the appellate court.

Burnett advocated the organization of a provisional government in California until such time as regular statehood could be set up. This was forestalled when General Bennett Riley called a constitutional convention that met in September, 1849. In the election in which the proposed constitution was presented to the people for adoption, Burnett was elected the first Governor of California. He thereupon gave all his time and energy to getting the state government set up. He could not begin to read all the bills passed by the first Legislature, but assigned the reading thereof to trusted assistants and accepted their reports for his action. He resigned as Governor as the second session of the Legislature was drawing to a close. He gave as his reason "circumstances entirely unexpected and unforeseen."¹ He thereupon took up the practice of the law with his son-in-law, C. T. Ryland, and William T. Wallace, who became his son-in-law a little later. However, private affairs took up a large part of his time. He was offered a place on the Supreme Court of California soon after he resigned the governorship, but declined.

Burnett suffered heavily from the fire of November 2, 1852, in Sacramento. He moved to Sacramento to help rebuild the community and became a member of the city council. He continued to live in Sacramento about two years.

Burnett was appointed a justice of the Supreme Court of California, January 13, 1857, to fill the vacancy caused by the resignation of Heydenfeldt, and served until October 13, 1857, when he resigned to permit the appointment of Field for a short term to fill out Heydenfeldt's term. The following day, October 14, he was appointed to fill the vacancy occasioned by the death of Murray, and served until October 2, 1858, when he was succeeded by Baldwin. His opinions are of a high quality. He had the misfortune, however, to fall into an inconsistency with regard to a slave case² which has thrown some

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unjustified doubt upon his ability as a judge. Joseph G. Baldwin characterized the opinion as giving the law to the North and the Negro to the South.

Upon leaving the Court, Burnett considered himself more or less retired and did a great deal of writing for a few years, mostly on religious and political themes. In 1878 he wrote his *Reminiscences*. This is as interesting and instructive a volume as Benjamin Franklin's autobiography. In 1863 Burnett went into the banking business in San Francisco, whereupon he moved to this community, continuing in this business until 1880, when he finally retired from active affairs.

Burnett died in San Francisco May 17, 1895. His remains were interred in the Catholic Cemetery at Santa Clara.

Burnett was a tall, spare man with a strong, rugged constitution. His abstemiousness in eating was one of

his prominent qualities. He was by disposition cheerful and even sportive. His writings constitute a rather full autobiography and a fine record of his thinking and philosophy on many subjects. Apparently he did not affiliate with any church at first. In due course he became a Campbellite. In Oregon he became a Catholic and remained a devout member of this church the rest of his days. He opposed slavery. While he did not make many enemies, he nevertheless made a few, one or two of them both bitter and vindictive. He liked to reminisce. His honesty and integrity were of the highest order.

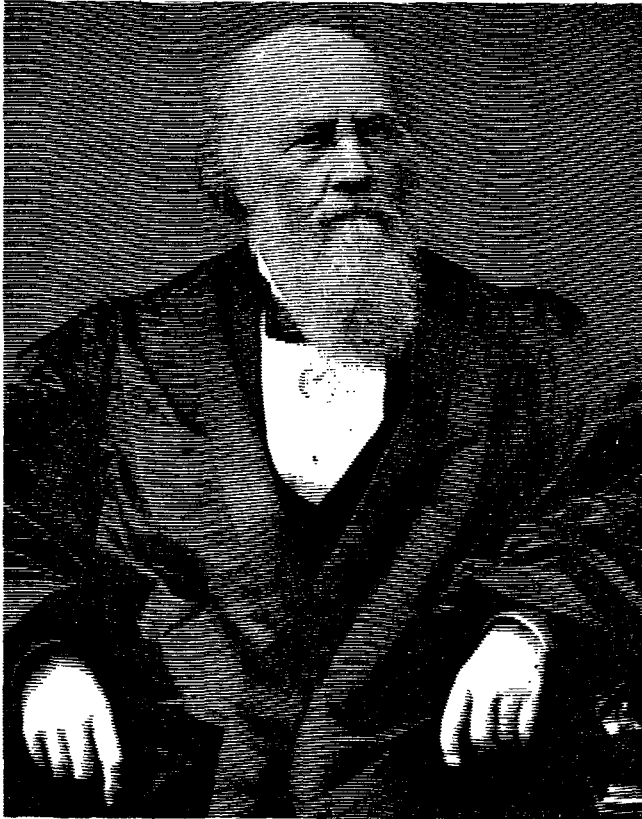
FOOTNOTES

1. Peter H. Burnett, *Recollections and Reminiscences of an Old Pioneer*, p. 377.
2. *Ex Parte Archey* 9 Cal. 147.

STEPHEN J. FIELD

Eleventh Justice, October 17, 1857-September 13, 1859

Fifth Chief Justice, September 13, 1859-May 20, 1863



Stephen J. Field

by EUGENE M. PRINCE

Stephen Johnson Field had greater effect on California history and legal institutions than any other man whose history this volume records. He drafted the statutes providing the reformed procedure, civil and criminal, which is the basis of California procedure to this day; he did more probably than any other single man to establish stability in California land titles; he was among the chief architects of the systems of mining and water law established in California and later adopted by federal statutes; he was a sound interpreter of these statutes and of public land law generally. These services to California are over and above Field's tremendous contribution to the nation as a member of the Supreme Court of the United States.

Field's judicial service consisted of a few months as alcalde of Marysville, five and a half years as jus-

tice and Chief Justice of the Supreme Court of California, and the longest period on the United States Supreme Court ever served by any member thereof, thirty-four years and nine months (1863-1897). He was the first of the three Californians (McKenna and Warren the others) appointed to the Supreme Court and the only one with prior service on the Supreme Court of California. As circuit justice he sat in the federal circuit court and rendered important decisions there.

To the public service embodied in his judicial record Field added one term in the Assembly of the California Legislature, the term then being one year (Constitution of 1849, Article IV, sections 2, 3). It is almost beyond belief that one man in one session could have drafted so much important legislation of permanent effect.

Added to all this was a personal life containing adventures and colorful incidents which occurred not only in his pioneer days in California but also in his years on the bench. Field had strong convictions and few inhibitions against stating them. His integrity was unimpeachable but he was an apt practitioner of the art of making enemies and of quarreling with all sorts and conditions of men. He engaged in acrimonious public exchanges and rough and tumble fights. He accepted two challenges to duels, and sent one challenge himself, his messenger being none other than David C. Broderick, who later met his death in a duel with David Terry, Field's onetime colleague on the Supreme Court of California. Field's duels did not take place because his adversary in each instance backed down.

On both the Supreme Court of California and the Supreme Court of the United States Field was a fairly frequent target for unjustified abuse, often so violent as to be almost incomprehensible. He was falsely accused of accepting bribes for decisions in the Supreme Court of California. A land title decision in the federal circuit court resulted in his receiving an infernal machine which by good luck he did not finish unwrapping. A later decision in the circuit court, this time in the Sharon divorce case, incurred the bitter enmity of Terry. This culminated in Terry's assault, some say assault with murderous intent, on Field and in Terry's death from bullets of Field's bodyguard, as told in the account of Terry earlier in this book.

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It is apparent that no short sketch can do justice to Field. Fortunately much has already been written about him¹ and this material includes two sets of reminiscences dictated by himself, of which a few copies were privately printed. These are here cited as "Early Days"; page references are to the printing of 1893.

Stephen Johnson Field was born in Haddam, Connecticut, on November 4, 1816, son of a Congregationalist clergyman. The family was a remarkable one. All five sons attained prominence, four of them national prominence. Besides Stephen J., there were David Dudley, one of the all-time great American lawyers and principal author of the Field Codes; Cyrus West, who laid the Atlantic cable; Jonathan, once president of the Massachusetts State Senate; and Henry Martyn, nationally prominent Protestant clergyman and religious editor. A sister married Rev. Josiah Brewer, and their son, David Josiah Brewer, became a justice of the Supreme Court of the United States (1889-1910). Eight of his years there were as a colleague of his uncle, Stephen J. Field, whose basic judicial philosophies he shared.

In 1829 Mr. and Mrs. Brewer set out for the Levant to establish missionary schools. Stephen, then thirteen, accompanied them and spent two and a half years in Smyrna and Athens and in touring Greece and Asia Minor. The original idea was that he might qualify as a professor of Oriental languages. To such a pursuit he never inclined, but he gained from his travels a good cultural background plus a fair knowledge of modern Greek, French, Italian, and Turkish. Much more important were his contacts with other peoples, religions, and habits of thought. These destroyed any tendency, if his early training had engendered such, to consider that New England Puritanism had a monopoly of truth or culture. As expressed by Professor Pomeroy:

Indeed, his views underwent an entire revolution; and there was laid the foundation of that broad tolerance which has ever since been a distinguishing element of his character.²

Returning to the United States, Field graduated from Williams College in 1837 with the highest honors in his class. He was the first college graduate to serve on the Supreme Court of California. He studied law in the office of his brother David Dudley Field, was admitted to the bar in 1841, and to partnership with his brother the same year. He worked with his brother not only in practice, but in the drafting of the Field Codes.

The reader must be referred elsewhere for more than brief mention of the effort and accomplishment involved in these codes.³ Starting this work in 1839 David Dudley Field pursued it for fifty years. One of his basic objectives was to destroy the procedural (not substantive) differences between law and equity which had created a tangled mass of snares for the bar. Another was to substitute notice pleading for common law issue pleading and forms of action. The Field Codes became the largest single element of origin for the reformed procedure adopted by California and many other states, and finally, in 1938, by the Federal Rules of Civil Procedure. The federal courts thereby got rid of the worst of their archaic procedural monstrosities, some of common law origin, others judge-created for incomprehensible reasons.⁴

Stephen arrived in San Francisco via Panama December 28, 1849. His attention had been directed there as early as 1845, this again by his brother, whose activities had so tremendous a scope. Through research into questions as to the northwestern boundary between England and the United States, David Dudley Field had become acquainted with the history of the Pacific Coast, had foreseen the Mexican War and was satisfied that San Francisco would become a part of the United States and a great city ("Early Days," pp.1-2).

Stephen found, however, little promise in the San Francisco of 1849, and on January 12, 1850, went to Sacramento; thence to the coming Queen of the Northern Mines, the newly established town of Marysville, so named for the promoter's wife, a survivor of the Donner party.

After three days in Marysville, Field was elected alcalde, defeating a comparative old timer with six days residence. An alcalde was a Spanish-Mexican judicial officer roughly corresponding to a justice of the peace. The California Constitution made no provision for such office, and Field, therefore, obtained an appointment as justice of the peace from the Governor, for which there was probably no legal warrant either. Field nevertheless proceeded to exercise authority civil and criminal over all sorts of questions, making up his own laws and penalties when necessary. In his own words, "I superintended municipal affairs and administered justice in Marysville with success" (see "Early Days," pp. 22-39).

STEPHEN J. FIELD

Eleventh Justice

Fifth Chief Justice

His activities as alcalde ceased with the arrival in Marysville in June, 1850, of the first district judge appointed under the new Constitution, W. R. Turner. Field started practice as an attorney in Judge Turner's court. The two were immediately at odds, possibly because Turner thought Field was an Abolitionist, possibly because Field was jealous over the loss of his own judicial prerogatives. The judge, having the upper hand, disbarred Field and sentenced him to fine and imprisonment on the ground that Field's exception to an adverse ruling was a contempt of court. The Supreme Court of California set these orders aside in cases reported in 1 Cal. 143, 152, 187, 188, 190, but much time went by before Judge Turner got around to complying with the Supreme Court rulings. Meanwhile Field had no law practice. He was also subject to threats of violence and, in this predicament, sought out Justice Bennett of the Supreme Court. Field thus describes what happened ("Early Days," p. 53):

Besides being abusive in his language, he [Turner] threatened violence, and gave out that he intended to insult me publicly the first time we met, and that, if I resented his conduct, he would shoot me down on the spot. This being reported to me by various persons, I went to San Francisco and consulted Judge Bennett as to what course I ought to pursue. Judge Bennett asked if I were certain that he had made such a threat. I replied I was. "Well," said the Judge, "I will not give you any advice; but if it were my case, I think I should get a shot-gun and stand on the street, and see that I had the first shot." I replied that I could not do that; that I would act only in self-defense. He replied, "That would be acting in self-defense." . . . Though I was not prepared to follow Judge Bennett's suggestion, I did purchase a pair of revolvers and had a sack-coat made with pockets in which the barrels could lie, and be discharged; and I began to practice firing the pistols from the pockets. In time I acquired considerable skill, and was able to hit a small object across the street. An object so large as a man I could hit without difficulty.

There was no bloodshed, but the Turner incident was not over.

In the fall of 1850 Field was elected to the Assembly, the lower house of the California Legislature. The campaign was vigorous, and the cost of it took all Field's savings. A single item of campaign expense will explain why—a bill of the Orleans House in Downieville, October 9, 1850, for 460 drinks and 275 cigars, total \$298.75, receipted as paid in full by Mr. S. J. Field ("Early Days," p. 67). *

Field accomplished a prodigious amount of legislative work in the one session at which he served.

Along with serious business he had time to settle scores with Judge Turner. A part of Field's bill for the organization and administration of the California courts, a major legislative achievement, changed the boundaries of Turner's judicial district (Cal. Stats. 1851, p. 9), relegating the judge to the "wilderness" of Trinity and Klamath ("Early Days," p. 76). Field was not successful in getting Turner impeached, but his attempt to do so almost got him into a duel. An assemblyman spoke against impeachment with cocked revolvers lying on his legislative desk, and most of the speech was an attack on Field. Field challenged his detractor, his message being carried by David C. Broderick, then president pro tem of the Senate, later to become United States Senator and to die in a duel himself:

In anticipation of a possible collision, Mr. Broderick took me out early the following morning to try my skill in the use of a pistol. I tried a navy revolver and succeeded in hitting a knot on a tree, at a distance of thirty yards, three times out of five. Broderick declared himself satisfied. ("Early Days," p. 83).

The incident ended in an apology to Field.

The civil and criminal practice acts (Cal. Stats. 1851, pp. 51, 212) were monumental pieces of legislation. They were substantially incorporated in the 1872 codes and are among the basic foundations of California procedure today. In the practice acts Field did not merely follow his brother's draft. He modified over three hundred sections and added one hundred more. The Governor had no time to read these statutes within the constitutional time limit for signing them, but signed them anyway on Field's say-so ("Early Days," p. 79).

The practice acts contained many procedural provisions with substantive effects of the highest importance. Regarding mining law, Field himself made the following statement, immodest but true ("Early Days," pp. 89-90):

I also incorporated a provision into the Civil Practice Act respecting suits for mining claims, which was the foundation of the jurisprudence respecting mines in the country.

Continuing, he said ("Early Days," p. 90):

The provision was that in actions before magistrates for such claims, evidence should be admitted of the usages, regulations, and customs prevailing in the vicinity, and that such usages, regulations, and customs, when not in conflict with the constitution and laws of the State, or of the United States, should govern the decision of the action.

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Sue Virginia Swearingen Field

The procedural implement was to permit possessory actions respecting mining claims; thus the paramount title of the United States was not drawn into question ("Early Days," pp. 89-90), and since the United States was offering no objection to trespass upon its mineral lands, the mining locator who won his suit in the state court obtained a good title in fact if not in theory. The federal statutes of 1866 (14 Stat. 253) and 1872 (17 Stat. 91) legalized what the miners had been doing for many years, and provided for the future disposal of public mineral lands. The statutes of 1866 and 1872 are in large part law today. Fundamental departures therefrom were not made until the Leasing Act of 1920, applicable to petroleum and other nonmetallic minerals (41 Stat. 437) and the passage in 1954 of the statute for multiple use of public lands (68 Stat. 708).

In a similar way force of law was given to an equitable system of water regulation based on appropriation in accordance with local customs of non-navigable waters on public lands of the United States. This system also was later recognized by federal statute.

Speaking of the Field-drafted California statute of 1851, from which the federal legislation stemmed, Professor Pomeroy said:

No single act of creative legislation, dealing with property rights and private interests, has exceeded this one in importance and in its effects in developing the industrial resources of the country.⁵

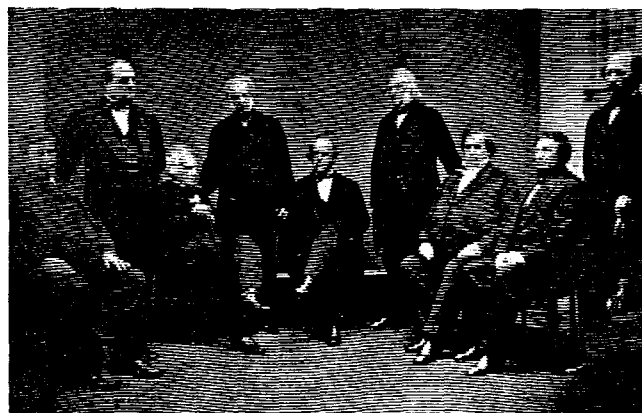
Other important items of legislation attributable to Field are too many for mention here; matters of which he was particularly proud were the extremely

liberal provisions for homestead exemptions and exemptions from execution.

Returning to Marysville Field re-engaged in law practice and was able to better a financial status depleted to the vanishing point by troubles with Judge Turner and legislative service. His professional activities were interrupted, however, by difficulties with William T. Barbour, the judge who succeeded Turner in Marysville. Insults and challenges passed back and forth, but once again Field escaped a duel because his opponent eventually refused to fight ("Early Days," pp. 105-114).

In 1851 Field failed in an effort to obtain the Democratic nomination for the state Senate. In 1857 he was an unsuccessful candidate for the United States Senate against William M. Gwin. Later the same year he was elected by an overwhelming majority to the Supreme Court of California. As a lawyer he had taken some sixty cases to that Court and had won forty-one of them. According to J. Edward Johnson, his earnings at the bar were \$42,000 in the year before he came to the Court as against his judicial salary of \$6,000. Field himself thought he had "a more lucrative practice than any lawyer in the State, outside of San Francisco" ("Early Days," p. 96).

Field's elective term to the Court was to commence in January, 1858; however, Justice Murray died in September, 1857, and Field was appointed October 17th to serve until his regular term should commence. David S. Terry was Chief Justice when Field came to the Court and Peter H. Burnett the other associate. Terry resigned September 12, 1859, to fight his duel with Broderick. Field said ("Early Days," p. 125):



*The Supreme Court in 1865
Davis, Swayne, Grier, Wayne, C. J. Chase, Nelson,
Clifford, Miller, Field*

STEPHEN J. FIELD

Eleventh Justice

Fifth Chief Justice

I was absent from the State at the time, or I should have exerted all the power I possessed by virtue of my office to put a stop to the duel. I would have held both of the combatants to keep the peace . . . and called others to my aid, to bring about a reconciliation. I believe I could have adjusted the difficulty.

Concerning Terry, later to be a principal in the most tragic happening of Field's life, Field had these things to say in days before troubles had arisen:

No one ever questioned the integrity or ability of Hydenfelt [*sic*] and Bennett, or the integrity of Burnett or Terry. . . . Terry had ability, but his southern prejudices and partisanship affected his judgment.⁶

And again ("Early Days," p. 124):

Mr. Terry had the virtues and prejudices of men of the extreme South in those days. His contact and larger experience since with men of the North have no doubt modified many of those prejudices, and his own good sense must have led him to alter some of his previous judgments. Probably his greatest regret is his duel with Mr. Broderick, as such encounters, when they terminate fatally to one of the parties, never fail to bring life-long bitterness to the survivor. A wiser mode of settling difficulties between gentlemen has since been adopted in the State; but those who have not lived in a community where the duel is practiced cannot well appreciate the force of the public sentiment which at one time existed, compelling a resort to it when character was assailed.

With Terry's resignation Field became Chief Justice and W. W. Cope was appointed associate justice. Joseph C. Baldwin had succeeded Burnett in 1858, and Field, Cope, and Baldwin worked harmoniously and made up an exceptionally able Court.

Professor Pomeroy has pointed out that the early Supreme Court of California faced gigantic difficulties; more probably than were presented in any other state.⁷

A legal system had to be created out of chaos. The common law gave no clue to many pressing questions. Little was known and not much was ascertainable about Mexican law, but enormously valuable rights depended on it. The Mexican land grants were so vast that American settlers could not be reconciled to them and considered them a monstrous wrong. Yet the United States was bound by the Treaty of Guadalupe Hidalgo to protect property rights in territory ceded by Mexico. The Supreme Court of California was determined, with no one more determined than Field, that the treaty obligations should be respected and enforced. "It was not for the Supreme Court of California to question the wisdom or policy of Mexico in making grants of such large portions of her domain, or of the United States in stipulating

for their protection" ("Early Days," p. 150). Yet decisions to this obvious point of simple justice, for example, *Mahoney v. Van Winkle* (1863) 21 Cal. 552, 576, and earlier cases therein cited, brought torrents of abuse upon the Court.

More commotion arose from the decision in *Hart v. Burnett* (1860) 15 Cal. 530, sustaining the Van Ness Ordinance of the City of San Francisco. By Mexican law each pueblo, or organization, was entitled to a grant of four square leagues of land. San Francisco claimed this grant as successor to the Mexican pueblo, recognizing, however, by its ordinance, rights of persons in possession on January 1, 1855, and alcalde grants prior to July 7, 1846, the date on which Mexican authority passed to American. Certain conveyances by city officials were not validated; of these Field said, with irony that would have wide application today: "it was refreshing to see with what generous liberality they disposed of lots in the city—a liberality not infrequent when exercised with reference to other people's property" ("Early days," pp. 166-167).

In sustaining the ordinance the Court held the city's title to pueblo lands was on a public trust and could not be divested by unauthorized official action or by execution upon alleged obligations of the city. This seemed fair enough, but the enormous values which had attached to San Francisco property made the Van Ness Ordinance and pueblo grant a highly explosive subject.

The same subject came before Field again after his appointment to the Supreme Court of the United States. Sitting in the circuit court in San Francisco, he decided as against the United States whose title, if any, had not been affected by *Hart v. Burnett*, that the city was entitled to the pueblo four square leagues subject to reservations including the public trusts upon which the title was held. The Supreme Court allowed an appeal from this decision of the circuit court (*United States v. Circuit Judges* (1865) 70 U.S. (3 Wallace) 673, but before the appeal could be argued the position taken in Field's decree was validated by federal statute (March 8, 1866, 14 Stat. 4).

It is odd to find a Supreme Court justice inspiring a federal statute to prevent the court from reviewing his own order in circuit, but Field's direct action at least brought order out of a chaotic situation. There was another result to Field personally. He received a

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package in Washington which he started to unwrap; then decided not to. The package contained an infernal machine or "torpedo"; on the inside lid was a newspaper clipping referring to Field's decision in the case of the pueblo lands ("Early Days," pp. 177-182).

Among the troubles of the Supreme Court of California was the asserted theory that the state by virtue of its sovereignty owned all precious metals, whether in public or private lands. Some support was given to this theory by the decision in *Hicks v. Bell* (1853) 3 Cal. 219, 227. The decision was based on early English precedents but the theory resembled the regalian theory of Spanish law. However, in *Biddle Boggs v. Merced M. Co.* (1859) 14 Cal. 279, 373, where the opinion was written by Field, the Court held that there was no right to dig for metals on the land of private individuals under any assumed or implied license from the state. In *Moore v. Smaw, etc.* (1861) 17 Cal. 199, the whole doctrine that precious metals belong to the state by virtue of her sovereignty was rejected.

The *Biddle Boggs* case involved the famous Mariposa grant confirmed to John C. Frémont as purchaser of a Mexican title. One product of the decision was an anonymous pamphlet entitled "The Gold Key Court or the Corruptions of a Majority of It," this being one of several cases in which irresponsible charges of accepting bribes were made against the judges.⁸

On one subject the Court took the popular side; this related to the occupation of federal public lands in advance of measures enacted by the government for their sale. As noted before, there was no federal legislation disposing of California mineral lands until 1866. In line with the statute drafted by Field during his legislative term the Supreme Court of California held that the first possessor or appropriator of a mining claim, located in accordance with local usage, had a good right against everybody except the government, and was entitled to protection accordingly. The cases were tried between the parties without reference to the superior claims of the United States (see *Coryell v. Cain* (1860) 16 Cal. 567, 572-574).

The foregoing inadequate account is all that space here permits with reference to Field's tremendous judicial service on the Supreme Court of California, except for reference to one more famous case, *Houston v. Williams* (1859) 13 Cal. 24. The Court there

held that a statute requiring it to file a written opinion with a statement of reasons for decision was an unconstitutional encroachment on the independence of the judiciary. The Court in fact wrote opinions in most cases, but by its own volition. The opinion by Field in *Houston v. Williams* said (13 Cal. 25):

The legislature can no more require this Court to state the reasons of its decisions, than this Court can require, for the validity of the statutes, that the legislators shall accompany them with the reasons for their enactment.

The Constitution of 1879 defeated the Court on this point by putting the requirement for written opinions with reasons stated into the Constitution.

While Field, by the time he became a member of the Court, had stopped carrying a derringer and bowie knife ("Early Days," p. 102), he retained his aptitude for controversy. Early in his tenure there was a dispute as to whether the Governor or the Court should appoint the court reporter. Trouble arose with the Governor and among the judges. One of the candidates for reporter stabbed and seriously wounded the other ("Early Days," pp. 115-118).

On a noncontroversial front Field, on June 2, 1859, married Sue Virginia Swearingen. He was forty-two; his pretty San Francisco bride twenty years younger. The marriage was childless, but proved, nevertheless, to be completely happy.

On March 3, 1863, Congress passed an act reorganizing the judicial circuit on the Pacific Coast and providing for its assignment to a tenth justice of the Supreme Court of the United States. On March 10th Field was appointed to the vacancy so created and was confirmed the same day.

There were many reasons behind this statute and this appointment. One was the need of the supreme bench for someone who knew conditions in California. Another was the need for a justice to sit on the circuit court in California. Another was the support of David Dudley Field, an early and staunch supporter of President Lincoln, whose full confidence he had.

But there were far deeper causes for expanding the Supreme Court and putting a man like Field on it. Questions as to the status of the war had arisen which made it imperative that a majority of the Court be unquestionably loyal. There was a long road ahead and great fear of what might be done by

STEPHEN J. FIELD

Eleventh Justice

Fifth Chief Justice

those judges "who were more deeply devoted to the South or their own conceptions of the law than to the immediate needs of the Government."⁹ Few people today ever heard of the fact that only by a five to four vote did the Court hold that the Civil War was a war, and that the Northern blockade of Southern ports was, therefore, legal (*The Prize Cases*, 67 U.S. (2 Black) 635). Four justices voted the blockade illegal. Had there been five, what would have happened to the war or to our institutions? No one knows, or ever will.

From the time Field came to the Supreme Court his work there is the main thread of his life story. Great as that work was, space here permits only brief mention of a small part of it. (See, however, footnote 1, for reference to some of the writings about Field's work.)

Notwithstanding the background of his appointment, Field was not immediately called upon to deal with questions fundamentally affecting the war. The five-four decision validating the Northern right of blockade and capture was rendered on the day of Field's appointment, and that vital question did not again come into controversy.

Many of the historic war cases arose or were decided after hostilities were over. Field, though appointed by Lincoln, did not take the position that everything done by the government during the war was necessarily right. He was opposed to recriminations against the South and to the oppressive features of reconstruction legislation. He was on the majority side in *Ex Parte Milligan* (1866) 71 U.S. (4 Wallace) 2, where civil jurisdiction was upheld as against military, the ruling being that military commissions could not constitutionally function for the trial of citizens except in the actual theatre of war where the courts were not open. Field wrote the opinions in the so-called test oath cases. These involved statutes which, by requiring oath of past and present loyalty to the Union, imposed serious civil disabilities on ex-Confederates and their sympathizers. *Ex Parte Garland* (1866) 71 U.S. (4 Wallace) 333 involved a federal statute and the right denied the petitioner was that of practicing law. *Cummings v. The State of Missouri* (1866) 71 U.S. (4 Wallace) 277 involved a state statute and the right involved was that of officiating as a clergyman.

Field was a Union man beyond all doubt or suspicion, yet with the war over and the danger of disunion

past, he became one of the champions of opposition towards consolidation of the government. Though a lifelong Democrat he was not a states' right man in the sense sometimes attributed to him. He did believe that concentration of federal power, save in fields like interstate commerce, where it was necessary, would degrade and ultimately perhaps destroy the states; certainly, it would destroy the equilibrium contemplated by the Constitution. To these convictions his strong individualism added another, that is, that local questions should, to the full extent practical, be decided locally, not in Washington.¹⁰

On such subjects as mines and land law generally Field from the time of his appointment was regarded by his colleagues as particularly qualified and he wrote many opinions on these subjects.

Until nearly the end of his almost thirty-five years on the Supreme Court Field made the long trip to California each year or two years, as required, to sit as circuit justice on the federal circuit court. This he sometimes held alone; sometimes with the district judge; sometimes with the circuit judge after that office was created. Circuit courts were created by the Judiciary Act of 1789, but Congress did not provide for circuit judges until 1869. Lorenzo Sawyer, appointed in 1870, was the first circuit judge for the northern district of California (San Francisco).¹¹

Field rendered important decisions in the circuit court. One was the pueblo land case already mentioned. Others were the Chinese cases. There was tremendous prejudice in California against Chinese, and the state tried to establish an exclusionary immigration law under the guise of keeping out "lewd" persons. The Court invalidated the statute (*In re Ah Fong* (1874) 3 Sawyer 144, Fed. Case No. 102). San Francisco, which could always find reason for arresting a Chinese person, tried another approach; it passed a "sanitary" ordinance, requiring each prisoner's hair to be immediately cut short. This deprived the Chinese person of his queue which he had to have to return to China, and since nearly all Chinese wanted to return, the reasoning behind the ordinance was that they would not come here in the first place. The Court held against the ordinance (*Ho Ah Kow v. Nunan* (1879) 5 Sawyer 552, Fed. Case No. 6,546). In these and many other cases involving Chinese both in the circuit court and Supreme Court, Field's philosophy was that the national government had full authority over immigration, including power to

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exclude, but that Chinese residents in the United States were to be protected against annoyances and discriminations.

The tragic episode which involved Field and David S. Terry, his former colleague on the Supreme Court of California, arose out of a proceeding in the circuit court in the famous, or notorious, Sharon divorce litigation. The story will not be repeated here. It has been fully told in the Terry sketch earlier in this book; the climax was Terry's assault on Field and the fatal shooting of Terry by Field's bodyguard.

Field engaged in some extracurricular activities during his Supreme Court years. He served by appointment of the Governor of California on a commission of three to examine the 1872 codes. He was in 1877 a member of the electoral commission set up to determine the disputed presidential election of 1876. His vote was for Tilden. In 1880 he failed in an effort to obtain the Democratic presidential nomination. Strong opposition came from California, stemming, no doubt, from Field's unpopular stand in the Chinese cases.

Field's strength waned during the years following 1890. In April, 1897, he submitted his resignation from the bench, to be effective December 1st. (The correspondence then taking place is cited in footnote 1.) On April 9, 1899, he died, aged eighty-two, and full of honors. He was the last survivor of the Lincoln appointees to the Supreme Court. He had earlier spoken of "rosy views of judicial life gradually vanishing"; and had said ("Early Days," p. 147):

I soon discovered . . . that there would be little appreciation for conscientious labor on the bench, except from a small number of the legal profession, until after the lapse of years.

In Field's case the years had lapsed within his own lifetime and knowledge. He had been severely buffeted but it was acknowledged everywhere that he was one of the giants of his time and one of the all-time great American judges.

FOOTNOTES

1. The reminiscences entitled "Early Days in California" were dictated by Field in 1877. These he supplemented in 1893 by material entitled "The Annoyances of My Judicial Life," and the two sets of reminiscences were combined in one book, "Printed for a Few Friends—not published" (1893). It was entitled "Early Days in California—Attempted Assassination of Justice Field." The part about attempted assassination was written by George C. Gorham.

Other works about Field include: *Stephen J. Field, Craftsman of the Law* (Brookings Institution, 1930) by Carl Brent Swisher; *Legislative and Judicial Work of Judge Field*

with an introductory sketch by Professor John Norton Pomeroy of Hastings College of the Law, copyright (1882) by S. B. Smith, one-time law partner of Field (see "Early Days," p. 119); two sketches in *Great American Lawyers* (University Limited Edition, 1909), Vol. VII, pp. 1-85, the first being a biographical sketch by Professor John Norton Pomeroy, Jr., based on and extensively quoting from the prior article by his father, and the second being entitled "An Examination of Justice Field's Work in Constitutional Law," by Horace Stern of the Pennsylvania Bar; "Stephen J. Field," from *Bench and Bar in California* (The Occident Printing House, S. F., 1888), p. 141, by Oscar T. Schuck; "A Supreme Court Justice Resigns (wherein Stephen Johnson Field reviews his career)," a reprint of correspondence taking place at the time of Field's resignation, *State Bar Journal of California*, XIII (Sept., 1938), 3; "Stephen J. Field," by J. Edward Johnson, *State Bar Journal of California*, XXIII (March-April, 1948), 82.

To the above are to be added references to Field in the several histories of the Supreme Court of the United States.

The published law reports contain somewhat more than a thousand of Field's opinions; some six hundred in the Supreme Court of the United States, fifty-seven in the federal Circuit Court and the rest in the Supreme Court of California (see Field's statement in "A Supreme Court Justice Resigns," supra).

Unpublished material, much of which has been examined by J. Edward Johnson and abstracted in his notes, is in the California State Library, the Bancroft Library at the University of California, and Johnson's own collections.

2. Pomeroy, *op. cit.*, p. 10.

3. See biography of David Dudley Field by Helen K. Hoy in *Great American Lawyers*, *op. cit.*, Vol. V, pp. 125, 145-174.

4. For a very few examples, see "Some Pitfalls in Federal Practice," *Cal. L. Rev.*, XV (1927), 113.

5. *Great American Lawyers*, *op. cit.*, Vol. VII, p. 23.

6. This statement with comments on some other members of the early court was made in a letter by Field to Professor Pomeroy, June 21, 1881 (quoted in *Great American Lawyers*, *op. cit.*, Vol. VII, p. 34).

7. Pomeroy, *op. cit.*, pp. 24-28. In the same work Professor Pomeroy (pp. 38-41) summarizes Field's opinions on the Supreme Court of California under seven headings, namely: (1) "Matters of a general interest," including municipal corporations, mortgages, Sunday laws, legal tender, and taxes; (2) "Matters of a local interest," which is a misnomer because these "Matters" related to questions of the highest public importance, including Mexican land grants and the unlawful occupation thereof and of federal public lands; (3) "The ownership of the gold and silver in the soil, and the claim of the State to such ownership"; (4) "United States patents for lands"; (5) "The Pueblo of San Francisco, and the proprietary rights derived therefrom"; (6) "The community property of husband and wife"; and (7) "Other subjects."

8. See Swisher, *op. cit.*, pp. 84-87.

9. *Ibid.*, p. 115.

10. For reference to the cases, including those involving construction of the Fourteenth Amendment, see Field's Work in Constitutional Law, *Great American Lawyers*, *op. cit.*, Vol. VII, pp. 60-66.

11. See Moore's Federal Practice (Mathew Bender, 1961), 2d ed., Vol. I, pp. 9-10. See also tabulation of the federal circuits in 1 Federal Cases x; also sketch of Judge Sawyer in the present book.

JOSEPH G. BALDWIN

Twelfth Justice, October, 1858-January, 1862



Joseph G. Baldwin

Joseph G. Baldwin's attainments in the law were the highest. His legal abilities shown to advantage both at the bar and on the bench. The thing which distinguishes him above everything else is the relatively brief and more or less off-hand sketches which make up *The Flush Times of Alabama and Mississippi*, and *Party Leaders*. At the same time they constitute a superb revelation of him. These sketches and essays insure him a fame as permanent as appreciation of more than usual gifts, and will continue to reintroduce him to each new generation in a way that will perennially re-establish him as one of the sparkling personalities of all time. A man of humor, wit, and a kindly disposition, he was nevertheless by nature nervous, high-strung, and restless. He craved action and excitement. While his greatest natural talent lay in the written word, legal labors claimed practically all of the time and energies of his mature life.

Complementing the record of his life which is woven into his published writings, are the somewhat numerous letters to his wife, other members of his family, and a few friends, commencing before his marriage and continuing almost to the time of his death, which happily have been preserved.¹ They were written for the most part as he was away from

home attending court of the circuits in Mississippi and Alabama; from California before his family arrived; and the period he spent in Nevada upon the discovery of the Comstock Lode, etc. Not only do these letters touch on a great deal of history, the details of which do not ordinarily get into the books, but at the same time they also tell much about historic celebrities. Through these crop out much revealing Baldwin's character, personality, point of view, temperament, traits, participation in movements and events, etc.

Born in Virginia, more of his life was spent there than in any other single place. His permanent fame on its widest scale, however, had its basis in the work he did in Alabama, where he spent the next longest period of his life. It was in California that he won his fortune, matured into a lawyer and judge of the first order, and closed his interesting career. His life is an expression of the typical American of ability, gifts, ambition, and energy of his time.

Enough is known of his hopes and aspirations, the methods he employed to bring them to fruition in his life, and the disappointments and disillusionments that came in translating them into realities, to fill his life with much instruction, not only to young men contemplating the law as a career, but also encouragement and reassurance to the able and ambitious lawyer, already on the way, who may be inclined to feel a little discouraged with the progress he may be making, particularly as relates to the material side. One contemplating Baldwin would have difficulty in finding an excuse for not making some distinctive contribution of his own. He made his as a country



*Sidney G. White Baldwin
Alexander (Sandy) White Baldwin*

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lawyer at a time when the obstacles and handicaps were infinitely greater than those of the present day.

Baldwin early became possessed of a consuming ambition to make a name for himself. The feeling never flagged. Almost from the beginning he sensed the importance of self-effort. Realization that genius can be no substitute for endless hard work came to him in youth and continued through life. One of a large family of only modest means, he early learned to do for himself. He sidestepped none of life's responsibilities, but assumed them all in their season, including the rearing and educating of a good-sized family. While he accomplished much in his lifetime, he had no more than begun as relates to some stirrings near to his heart, and the ambitions which laid hold of him in young manhood were exerting themselves with a vigor unabated, when in the meridian of his mental powers he was overtaken by death.

Joseph Glover Baldwin was born in Friendly Grove, located about a mile south of the Winchester of his day, Virginia, January 15, 1815, and was one of Joseph Clarke and Eliza Cook (Baldwin) Baldwin's seven children. He was of English stock, and it will be noted was a Baldwin on both his father's and mother's side. His first ancestor in America on his father's side was Nathaniel Baldwin and on his mother's John Baldwin.³ Both settled in Milford, Connecticut, in 1639. While Baldwin was born in Virginia, his family background was nevertheless that of New England. Briscoe G. Baldwin of the Virginia Court of Appeals was his maternal uncle.

Baldwin's family moved to Staunton when he was thirteen or fourteen. Here, after continuing his education for a short time in the common school, he became a scribe in a court clerk's office, and also commenced the study of the law. For all that is known he studied his law by himself. In association with his older brother Cornelius, who published two or three newspapers in Virginia, he also did some newspaper work at this time or a little later.

In 1835, aged twenty, Baldwin went to DeKalb, Mississippi. This area was at this time in the process of being rapidly settled. A reading of "My First Appearance at the Bar" in *Flush Times* will give an excellent introduction to his surroundings and experiences as of this time. He stated his admission to the bar there always inspired gratitude, because he was not asked a single legal question. A shed was fitted up for his first office. He remained in Missis-

issippi two or three years, when, about 1838, he moved to Gainesville, Alabama. Gainesville is not far from the Mississippi-Alabama line. His practice thereafter embraced at least a half dozen counties in both Mississippi and Alabama. This took him away from home a great deal, often for a month or more at a time. Apparently all his practice was confined to the circuit courts his first years as he was not admitted to practice in the Supreme Court of Alabama until 1843.

The twelve years Baldwin lived in Gainesville, at this time a heavy cotton producing area, constituted a very important period of his life. Here in 1840 he married Sidney G. White, a beautiful Alabama girl. Most of his seven children (five boys and two girls) were born here. They called their home in Gainesville Villa Vue. Mention of a smokehouse suggests the rural aspect. He took a prominent part in politics and in 1843 was elected on the Whig ticket to the lower house of the Alabama Legislature. In 1849 he was a candidate for Congress, losing by only a few votes. Here it was that he wrote most of the sketches which later went to make up *The Flush Times*.

In 1850 Baldwin moved to Livingston, in the same county as Gainesville (Sumter), where he continued in the practice much the same as he had prior to moving. Here he purchased a forty-acre farm. His home may have been located on this farm. He mentions in his letters through the years, by name, a number of slaves. For one of them, James, aged nineteen, he paid \$800. Slaves probably entered into the operating of this farm. There is with the Baldwin papers a copy of a bill of sale of "a negro woman Malinda about 23 or 24 years of age" warranted "as sound in body and mind and a slave for life," purchased in New Orleans for \$150. It was Baldwin's advice that his wife bring a Negro woman forty or fifty when she was coming to California, to serve as a nurse and help with the housekeeping.

In 1853 Baldwin went to New York City in connection with the publication of *Flush Times* (Appleton). It was his first trip to New York and he was impressed with its size, the large buildings, and the great concourses of people, etc. "... New York," he wrote his son Alexander W. (Sandy), "is to all American cities what the lion is to all beasts, or rather what Niagara is to all other cataracts. Such a forest of masts in the harbor, such an endless wall of brick and mortar!—think of a street built up on an average

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of four stories for five miles in length—that is Broadway. Think of a train of omnibuses two miles in length looking like a funeral procession, one following so close on the wheels of another—think of a stream of people of an evening like those coming out of a church door after service, filling both sides of the pavement, of the street pouring a tide of human life up and down Broadway for miles—and then the streets jammed with carriages and ‘busses’ all the way along . . . the whole air resounds with a perpetual hum like a cataract. It is a mighty place.” And then significantly by way of contrast to the quiet and peace of the Deep South: “. . . I should dislike it for a residence. It is too public and too noisy.”⁴ Who would guess, however, what pleased him about the most of all he heard and saw in New York? It was a sermon! A sermon by a Universalist preacher by the name of Chapin. “It closed in a burst of eloquent inspiration which left the audience quivering beneath its spell and then the choir started an anthem which had the effect of magic upon the congregation. It was the best thing I heard in N. Y.”⁵ In an interview in 1937 with Baldwin’s youngest daughter she told the writer that Baldwin, either while he was in New York or soon thereafter, was offered a connection in New York. Returning home he visited his old homes and relatives in Virginia, where he found to his dismay, if not humiliation, that he was more or less forgotten. However, he took consolation from the fact that it helped him to appreciate Alabama the more, and wean him from an undue attachment to Virginia.

Law business was quiet for Baldwin when he returned from New York and he became very restless. After a few weeks he decided to try practice in Mobile, where he made a connection with a lawyer by the name of Phillip Phillips. He made little headway there, however, and became very discouraged. He even remarked that if he had his life to live over he would choose almost any other profession, medicine alone excepted. In the midst of his most distressed and discouraged state of mind *Flush Times* came out. The book proved popular everywhere. Flattering notices and reviews appeared in the press of the highest standing. Before the book was published the editor of *The Southern Literary Messenger* had shown some of the sketches to Thackeray and he had spoken of them in a complimentary way. Presently he was noticed by everyone and invited to many brilliant social functions, a side of life he had not before cultivated, if not disdained. His spirits leaped

and suddenly he found himself possessed of more ambition than ever. Professional and financial prospects turned momentarily bright again. Writing his wife from Mobile he referred to a business opportunity which had come to him which excited him greatly. It looked so promising that he assured her her hair would blaze with diamonds yet. Whatever it was it did not materialize.

One might be led to suppose from a reading of many of the expressions descriptive of *Flush Times* that it was merely an exquisitely executed work of wit and humor. However, it is more than that. It not only represents a phase of the humor of the South, a humor that “had no counterpart in the humor of any other section of the United States” and which was “distinctly and peculiarly Southern,” but is also a more or less “truthful and satisfactory picture” of the society of the period it covers. This humor was not produced by professionals, but by a “group of humorists who flourished in bar-rooms, on law circuits, on steamboats and in the wide open spaces . . . debonaire settlers engaged in various tasks: lawyers, newspaper editors, country gentlemen of family and fortune, doctors, army officers, travellers, actors—who wrote for amusement rather than for gain . . .”⁶ While *Flush Times* showed to advantage in this department, it is more than a work of wit and humor only, and contains a number of essays of a solid serious nature. While space does not permit even a few quotations to give a sample of Baldwin’s style, for the benefit nevertheless of those who may not have ready access to *Flush Times* to enable them to look for themselves, a single sentence or two is here included.

“Those were jolly times,” he wrote, referring to his first years in the southwest. “Imagine thirty or forty young men collected together in a new country, armed with fresh licenses which they had got gratuitously, and a plentiful stock of brass which they had got in the natural way; and standing ready to supply any distressed citizen who wanted law, with their wares counterfeiting the article. I must confess it looked to me something of a swindle. . . . There was one consolation: the clients were generally as sham as the counsellors . . . The most that we made was experience. We learned before long, how every possible sort of case could be successfully lost; there was no way of getting out of court that we had not tested . . . Nothing was settled. Chaos had come again, or rather, had never gone away. Order, Heaven’s first

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law, seemed unwilling to remain where there was no other law to keep it company . . . As for reserving points except as a bluff or scarecrow, that was a thing unheard of: the Supreme Court was a perfect *terra incognita*: we had all heard there was such a place, as we had of Heaven's Chancery, . . . but we as little knew the way there, and as little expected to go there."⁷

It should be mentioned that as time went on Baldwin's estimation of the bench and bar of the southwest was the highest.⁸

In one of his little get-offs he tells of a judge who had made up his mind after hearing one of the attorneys, and stated that under no circumstance would he hear the other side, his mind being made up, and how the attorney shut off risked punishment for contempt by saying he wished only to read a single line or two from Blackstone to show how profoundly ignorant he was.

Things not working out in the law business in Mobile, Baldwin returned to Livingston early in 1854. He remained highly unsettled and the California fever also was mounting. Not without its potent influence were the flattering reports as relates to lawyers he knew who had already gone to California.

In the meantime, Baldwin had completed a second book, *Party Leaders*, a series of sketches relating to Washington, Jefferson, Hamilton, Randolph, Jackson, Clay, etc. This is a very readable book even in this day. Stephen J. Field characterized it as "a thoughtful history of the character and influence upon the country" of these men. He spoke of Baldwin's portraits presenting them "in the fullness and freshness of living beings, whom we see and hear, and whose power we feel."⁹ If anything, this is an understatement. Baldwin's pen portraits of these men are unquestionably among the most vivid and fascinating that have been delineated anywhere. Among those who spoke highly of them were Washington Irving, Millard Fillmore, and J. M. Mason, a United States Senator from Virginia.

Baldwin considered the Revolutionary era unquestionably the most brilliant period of our history, and Washington as the greatest man of that period. "We go back to those early times and revive our patriotism at the fountain-heads of public liberty," he wrote. "We feel better nerved for the performance of our duties, by our intimacy with those who accomplished the great deeds of the Revolution. We find among

them, and especially in the chief of them, what is so important to a people, *an ideal of patriotism and excellence*. Not a lesson, merely, nor a teacher, but a warm and living example, an impersonation of every moral, political, social and heroic virtue. The very existence of such a man, the mere fact that he lived, is a treasure of inestimable value to our people. It may keep them from falling, or, if unhappily, they *should* fall, it furnishes the means of their recovery."¹¹

No one need have any fear of becoming sleepy reading *Party Leaders*. The descriptions of men and character, and sage comments almost without end, are breath-taking.

Baldwin came to California by way of the Isthmus in the summer of 1854, leaving his family in Alabama to follow later if things should work out. He stopped off in New York on the way and arranged for the publication of *Party Leaders*. (Again Appleton.) He arrived in San Francisco about the middle of August. His friends already on the scene proceeded to do all they could to help him line up a connection with a going law firm. This did not work out at first and he practiced for some time alone. In 1855 he and Samuel M. Bowman from St. Louis joined forces. The next year or so he became associated with Joseph B. Crockett, later a justice of the Supreme Court of California, and A. P. Crittenden, which continued until Baldwin went on the Court in 1858. Baldwin worked very hard and became recognized as one of California's first lawyers. One of the most outstanding things in his letters until his family joined him is the way he drove himself to make himself the first lawyer in the state, no simple or easy assignment considering the competition he had from men of experience and great ability from the eastern part of the United States. He estimated that the Crockett firm was netting \$60,000 a year when he joined it and that his work would be worth \$10,000 to \$12,000 a year to start with. Both socially and professionally Baldwin was accepted and welcomed by people of great property interests as well as influential in other respects. When Trenor W. Park of H. W. Halleck's firm was challenged to a duel in March, 1855, he placed his fortunes in the hands of Baldwin and Joseph Folsom. The latter was probably the wealthiest real estate owner in San Francisco at that time.

Baldwin was enthusiastic about California from the beginning. "This is a fine country as full of law as it is gold and fleas."¹² "This is the healthiest city

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Twelfth Justice

in the world; and at no distant day destined to be one of the largest. It is now, I think, the most agreeable place of residence in the Union."¹³ "I returned Sunday night from Alameda County—a county just opposite on the other side of the Bay. I think it is the prettiest country I ever saw—beyond all doubt the loveliest. No words can describe the romantic and picturesque beauty of the scenery."¹⁴ These quotations are merely representative of a number that could be taken from the letters to his family.

It was not long until he was arguing a case in the Supreme Court. Writing to his wife he observed: "It looked rather comical to me to see these young men sitting up as Supreme Court Judges over a great state, passing every term millions of dollars in their decisions. The Chief Justice is only 30 or 31 years old."¹⁵ This was Murray. Heydenfeldt from Alabama was another, and the third man was Wells. Their ages were respectively thirty, thirty-eight and thirty-three. Heydenfeldt went out of his way to extend him every courtesy. Baldwin counted him one of his best friends. In his history of California, Bancroft speaks of Baldwin as "an able lawyer," who upon coming to San Francisco "was soon overwhelmed with great cases, some of which involved the public interest," "chiefly city suits, dragging through the courts from year to year, to the profit of the lawyers and the ruin of client."¹⁶

Mrs. Baldwin and the younger children came to San Francisco in 1855, leaving the three older ones in the South to complete their education. In the meantime he had a few homesick spells. Nor was he wanting in power of expression on such occasions. Sample: "I feel very lonely and homesick—down in spirits—sick in mind, pining for home, and the dear beings that make a home and whom being away the whole world besides cannot supply the place of; who lost, the heart is unfilled and void. . . . My heart as I pace the long gallery grows weary, dark and sad, as my thoughts wander back over many a league of land and sea to the old home which, uninviting as it looked when I was there, now seems clothed in beauty, or at least, an air of peace and comfort hangs over it."¹⁷

Baldwin was elected a justice of the Supreme Court of California September 1, 1858, running on the ticket of the Lecompton wing of the Democratic Party, defeating John Currey, running on the Union ticket. That family excitement over a political victory was no less in that day than one sees in later times

is borne out by the report of Baldwin's son Holly (twelve) to his older brother Joe (fourteen or so), still in Alabama. "Last night about half ten o'clock," he wrote, "a party of Pa's intimate friends accompanied by a band of music serenaded him, he invited them in and after having a drink went away and serenaded Governor Weller, also . . . The Democrats of the city fired off a great many cannon in honor of Pa's election." "But although they got the State yet the Black Republicans got San Francisco and Sacramento, the two largest cities in the state. In one town Currey (the Black Republican candidate for Supreme Judge), got 32 votes to Pa's 2, but to make up for it in another county Pa got 119 votes and Currey got 1! Pa beat him by a majority of about 8000 votes."¹⁸ Baldwin received 44,599 votes to 36,198 for Currey. It is interesting that Holly referred to Currey as a black Republican while the party designation was the Union Party. It was Baldwin's opinion that Southern men were more pro-slave in California than in Alabama and that an Abolitionist was more odious here than in Mississippi. Baldwin succeeded Burnett on the Court.

Soon after the election the Baldwin family moved to Sacramento, then a city of some ten-twelve thousand population, where the Court held its sessions, taking his place on the Court soon thereafter. Terry was the Chief Justice, and the other associate justice was Field. Field became the Chief Justice the following year when Terry resigned to fight his duel with Senator Broderick. W. W. Cope succeeded Terry. Baldwin and Field entertained the greatest admiration for each other, dating back before Baldwin came to the Court. The Baldwins added the name Field to their son Sidney's name to make it Sidney Field Baldwin.

The Breckinridge Democrats wanted Baldwin as their candidate to succeed himself on the Court. His name was presented in their convention in the summer of 1861, but he declined. New considerations were bidding for his interest.

Baldwin wrote a total of about 550 opinions the three years he served. Except for *Hart v. Burnett* 15 Cal. 530, which is eighty-seven pages, they run on an average of a little over two pages in length. Field spoke of *Hart v. Burnett* as without precedent in the exhaustive research it exhibited.¹⁹ C. C. Goodwin states Baldwin went to Mexico to complete his researches in connection with this case.²⁰ Writing to

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Baldwin from Mississippi during the Civil War, Halleck spoke of it as "a *weak* opinion" that "could hardly stand up under its first load,"²¹ no doubt meaning the authorship, or the Court as constituted at the time Baldwin was a member. Halleck mentioned that he had been accused of many things, but had as yet to be accused of being a judge in California. In the opinions Baldwin wrote the courts below were affirmed some three hundred times, with reversals over two hundred times. Every once in a while he threw off a pithy line. In *Holmes v. Rogers* 13 Cal. 203, he observed that "An opinion is not a controversial tract, much less a reply to the counsel against whose views we decide." He was succeeded on the Court by Edward Norton, vacationing in Europe at the time of the election in September, 1861. Currey, the "black Republican" spoke of Baldwin as "a lawyer of much learning and an able and upright judge."²²

When Broderick was killed, the year after Baldwin came on the Court, there was enough speculation in at least limited circles as to whether he would seek the seat left vacant in the Senate to excite some notice.

The discovery of the Comstock Lode in July, 1859, came to exert a great influence on the course of Baldwin and his family. His son Sandy, practicing law in Downieville, wrote his father in part as follows: "The great cause of excitement here is the 'new diggings' in Utah Territory. The place of their location is not more than a two days' journey from here (not as far as to Sacramento) and a good many of our citizens have visited it. The mines are chiefly silver, and are of marvelous richness, producing \$3000 to the ton of quartz . . . the old times of '49 are being reenacted." Baldwin suspected the possibilities and went there at least twice while still on the Court. He was inclined to be sanguine and did some investing, which included buying into the Ophir mine, the first one discovered on the Lode. Baldwin's sons Sandy and Joseph G., Jr. (called "Little Joe" to distinguish him from his father, who was called "Big Joe," though the son was the larger) took up their permanent residence in Nevada. John B. Felton, husband of Baldwin's oldest daughter, Kate, also invested heavily with them in mining and milling activities. While these ventures made Baldwin financially independent, and brought him some sizeable easy money, at least for the moment, he nevertheless did not become

one of the Comstock tycoons. As Baldwin visited Nevada, while still on the Court he did some law work there and may well have realized more financial reward therefrom than he received as a member of the Court.

When Baldwin left the Court he became associated in the practice with James B. Haggin, who became a great financial figure, in San Francisco. Later he became associated with his son-in-law, Felton. However, he spent a great deal of his time for a while in Nevada.

In September, 1863, Baldwin made a trip to Washington, D. C. While it was business that took him there, he was anxious to see what he could do for his wife's brother John, who had been taken a prisoner of war. He visited his wife's folks in Connecticut, where they had moved after Judge White's death, spent some time in New York, but the greater part in Washington.

The high point of his trip was an interview with Lincoln. It may be doubted, however, if he appreciated this as much as some others might have done, entertaining the reserve which he did with regard to Lincoln and the Republicans. Speaking of the occasion he referred to Lincoln as "Abe" and "Old Abe,"²³ suggesting a little less respect than might ordinarily have been expected. His call on the President seems to have been primarily in connection with his wish to procure permission to go to Virginia to see his old father, and help in bringing about an exchange of prisoners as relates to his brother-in-law. Lincoln indicated a willingness to do what he could but mentioned that he had "very little influence with this administration." Lincoln, he said, "was very kind and affable and knew all about me and more about *Flush Times* . . . than I knew myself."²⁴ It was on this occasion that he told Baldwin he slept with a copy under his pillow.²⁵ Baldwin's old friend Halleck, then in Washington, rendered all the assistance he could.

Baldwin did very little literary work in California, although he did some. Practically all of his energies here were directed to attaining a first place professionally and acquiring a fortune. He had never given up the idea of doing some writing here, however, and at the time of his death was giving consideration to a number of themes. His mind finally settled on writing up the flush times of California and Nevada as he had those of Alabama and Mississippi, and left at

JOSEPH G. BALDWIN

Twelfth Justice

least a start thereon in manuscript form.²⁶ His death at forty-nine, however, prevented the project going forward.

Baldwin suffered a sick spell in 1864. He had practically recovered when it became necessary for him to undergo a minor operation. In connection therewith lockjaw set in and he died in San Francisco suddenly and unexpectedly September 29, 1864. His death came as a great shock to his family and friends as well as the community. The funeral took place from Grace Cathedral in San Francisco. The bench and bar turned out as if an only brother had been taken. The members of the Supreme Court came down from Sacramento in a body. His remains were interred at Lone Mountain Cemetery in San Francisco. Later they were removed to John B. Felton's plot in Mountain View Cemetery, Oakland. A great live oak constitutes the only marker. He left surviving him his wife and five of his children. His second son, Joseph G., Jr., had died a little over a month before in connection with exposures suffered as he had eluded government officials who thought they had evidence that he was contributing aid to the Confederacy. One son, Briscoe, had died in youth.

What the Civil War did to many families is illustrated in the Baldwin family. The oldest son, Sandy, cast his fortunes unequivocally with the North and did everything in his power, both as a citizen and a federal judge in Nevada, to strengthen the hand of the government. However, he loved the Southern people and there were times when he found it impossible to withhold a word in their defense when their integrity and character were irresponsibly attacked. Joseph G., Jr., was one of the defendants in one of the few treason cases to come before the courts of America. *U. S. v. Greathouse* 26 Fed. Cases, 18. This case involved a bold and daring venture of fitting out a fighting ship to prey on Northern shipping. He had not been apprehended when the trial of a number of the defendants took place in San Francisco, and sometime later the action was dismissed as to him. Field went all out to help him get off, not an easy task, despite his great influence with the federal judges. Felton was an outspoken Union man. The younger members of the family apparently sided with the South.

The Grim Reaper was not kind to the Baldwin family. The third son, John White, always called Holly, died in 1868. The following year the oldest

son, Sandy, was killed in a railroad accident in East Oakland, leaving a widow and three children. Sidney Field—Sid—died at twenty-four in 1876. The sons were now all gone. John B. Felton died in 1877, and his wife, Kate, in 1888, survived by three daughters, one of whom was Katherine Felton, famous charity worker in San Francisco, leaving only Mrs. Baldwin and her baby girl, Cornelia, always called Neena or Nina (Mrs. John W. Gray). Mrs. Baldwin died in 1902 and Mrs. Gray in 1941.

There is enough in the Baldwin family letters to make a great family story. More than usual precocity obtained in this family, together with appreciation on the part of each member of the gifts possessed by the several individuals comprising it. It was taken for granted by each that they were cut out for important roles in life and each submitted with enthusiasm and dedication to the intellectual disciplines which were calculated to prepare them for these. The world is the loser that Baldwin and his boys were not permitted to tarry somewhat longer.

Baldwin was tall, just under six feet in height, and thin. His facial features were somewhat sharp. In Alabama he was mentioned as resembling Clay in looks. He himself mentioned his "rude and uninteresting exterior qualities,"²⁷ and as having no beauty to spare. His hair was brown and eyes gray. His health was never robust and he suffered much from headache, and "fidginess," to use a term of his own. He was not of the most even temperament. He could quickly become oversanguine, followed by a drop in spirits entirely unjustified. In intellectual qualities he was unsurpassed. He was a man of generous heart. (This could be amply documented from men like Field, who had a very good line on him.) He knew considerable of the heartaches, successful as he was, which the sin by which the angels fell may bring. However, he was never tempted to satisfy his towering ambitions by short cuts or at anyone else's expense. If character is one's weight and fineness in integrity, he was in this respect unexcelled. It might be that his last years' financial successes did not rest on as solid ground as they might have done, but in the matter of esteem and honor on merit from the best, he was affluent in a degree tasted by only the few. He had his wrestlings with the spirit in the department of religion and in middle life found it necessary to leave the church of his parents and youth and join another. As time went by he adopted

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as his name, Jo G. Baldwin. This became his best known signature, and *Party Leaders* was published under this name. A goodly number of the men who have been the justices of the Supreme Court of California have been awarded honorary LL.D.'s by leading institutions of learning. Baldwin was never so honored, but none was ever more deserving of it.

Baldwin's life, by reason of the instruction as well as entertainment it would afford, is deserving of a carefully worked out and more or less extensive writing. The writer found his life most fascinating, and took time out some years ago to prepare an account of it for his own satisfaction. This comprised 125 typewritten pages, double space, copiously documented. In trying to reduce it for present purposes it came out eighty-eight pages, quite too long. From this it will be seen how drastically the present sketch has been boiled down. Necessarily many interesting details have not even been alluded to.

FOOTNOTES

1. Baldwin's youngest daughter, Cornelia Stanley (Mrs. John W. Gray) made a typewritten copy (quotes therefrom have not been checked against the originals) of these letters available to the writer in 1937. She had at that time placed them in the possession of Robert M. Lester, many years with the Carnegie Foundation, New York, who still has them (1962). They have been microfilmed, and microfilms thereof are now in the possession of a number of libraries, including those of the universities of Virginia, Kentucky, Alabama, Auburn (Alabama), Bancroft (University of California), and Library of Congress. The originals are to be deposited in the New York City Library ultimately.

2. (Deleted)

3. Charles Candee Baldwin, *The Baldwin Genealogy from 1500 to 1881*, 2 volumes (1881), Supplement (1889).

4. Letter dated July 23, 1853.

5. Letter dated July 30, 1853, Winchester, Virginia.

6. Franklin J. Meine, *Tall Tales of the Southwest, An Anthology of Southern and Southwestern Humor, 1830-1860* (1930), Introduction xv-xvi.

7. "The Bar and Bench," *Flush Times*, pp. 52-54.

8. *Ibid.*

9. Field, *Personal Reminiscences, etc.* (1893), p. 126.

11. *Party Leaders*, p. 21.

12. Letter dated October 11, 1854.

13. Letter dated "Friday," probably November, 1854.

14. Letter dated November 15, 1854.

15. Letter date missing. There are on it three postscripts designated Friday, Saturday morning, and Sunday morning. Letter written sometime in October, 1854.

16. Bancroft's Works, XXIV, *History of California*, Vol. VII, 1860-1890, p. 233.

17. Letter to wife, November 7, 1854.

18. Letter, September 3, 1858.

19. Shuck, *California Anthology*, p. 307.

20. *As I Remember Them*, p. 19.

21. Letter dated June 28, 1862.

22. Political History of California, a manuscript in California State Library, Sacramento.

23. Letter from Baldwin to Felton, November 1, 1863.

24. *Ibid.*

25. Interview with Mrs. Gray, 1937.

26. Mrs. Gray turned this manuscript over to Mr. Lester, and he in turn to Professor George W. Polhemus and Richard E. Amacher at Auburn University, Alabama, who have plans for its publication. (1962.)

27. Letter dated November 9, 1839.

W. W. COPE

Thirteenth Justice, September, 1859 - May, 1863

Sixth Chief Justice, May, 1863 - January, 1864

Cope married Martha Neal in Kentucky. They had three children when Cope left for California in 1849.

Cope, arriving in California early in 1850, barely missed being a forty-niner.

Cope went to El Dorado County first, where he followed mining for a year or two. When Amador County was organized in 1854, he went to Jackson, the county seat, where he took up the practice of the law and became one of the leaders of the community. Here he was associated in the practice with James F. Hubbard and R. M. Driggs.

Cope carried on his activities in California without his family for about six years. His wife and children arrived in San Francisco in the summer of 1856. Casey and Cora had just been hanged in a public street by the Vigilantes when they arrived and the community was full of the excitement incident thereto. Mrs. Cope, a frail little woman, seriously wondered what she had come to.



W. W. Cope

Warner Walton Cope was born near Shelbyville, Shelby County, Kentucky, January 29, 1824. His parents died when he was very young, and it is doubtful if he remembered much, if anything, of them. He seldom mentioned them. He was raised by his maternal uncle, Edgar McDavitt, in Simpson County. Here he attended an academy and is reported to have received a pretty good grounding in Latin, Greek, and mathematics. The Copes are said to have originally come from Virginia.

Cope studied his law in the office of a lawyer by the name of Burton in Paducah and was there admitted to the bar and commenced the practice. Cope thought a great deal of Mr. Burton and named one of his sons after him. Burton in turn gave his namesake a fine gold watch on his twenty-first birthday.



Martha Neal Cope

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Cope made progress in his profession and in 1858 was elected an Assemblyman from Amador County. In the Legislature he became known as "Cope of Amador." His work as chairman of the judiciary committee has been highly praised.

In 1859 Cope became the candidate of the Lecompton Democrats for justice of the Supreme Court of California, winning the nomination over David S. Terry, the incumbent, and Lewis Aldrich, and elected in the election that followed. Cope would ordinarily not have taken his place on the Court until Terry's term would expire, some weeks after the election, but upon Terry's resigning in September to fight his duel with Senator Broderick, he was appointed by the Governor to fill the interim period, thus actually taking up his duties some weeks ahead of time. Field had just become the Chief Justice, and Baldwin was the other associate justice. These men thought a great deal of each other and were very congenial both as to their work and personal relations. When Field was appointed a justice of the Supreme Court of the United States in 1863, Cope became the Chief Justice of the Supreme Court of California, serving until January, 1864, when an entirely new court of five justices came in.

Cope's opinions are of a high quality. He seems to have been more than usually versed in procedural law. A number of his opinions have found their way into leading casebooks. Probably more have been chosen on procedural points than on any other.

Upon retiring from the Court, Cope moved to San Francisco, where he became associated in the practice with S. M. Wilson, one of the ablest of the early day lawyers. Later he practiced in association with Judge William P. Daingerfield, and still later with James T. Boyd and William H. Fifield. It has been said that Cope was a born lawyer in that his mind had a logical cast and naturally ran in legal channels.

Cope became one of the original trustees of Hastings College of the Law at the time it was founded in 1878, and continued to serve on the board until his death in 1903. He and Hastings were good friends. In 1880 Cope became president of the San Francisco Bar Association, and served in this position until 1885. He had been one of the original organizers of the association in 1872, and its activities represented

one of his first interests. In 1883 or 1884 he became the reporter of the decisions of the Supreme Court of California. Volumes 63 to 72 of the reports were prepared by him. As representing the conscientiousness with which he discharged this assignment may be mentioned the fact that he was selected by the justices of the Supreme Court to become one of the first three commissioners of the Court under the law that was passed in 1885, but declined as he felt that he could not properly leave his reporting assignment at that time. The commissioners were for all intents additional justices, and received the same salary.

It is not without interest to note Cope's reaction to the perennial problem of the best manner of selecting judicial officers. At the time he was elected a justice of the Supreme Court there was a movement on foot to have the judicial officers elected at special rather than at the general elections. In a speech at Sacramento in behalf of his candidacy for the Court he observed in part:

I have said elsewhere, and I repeat here, that, in my opinion, it is a great error that our Judicial officers are elected at our general elections. Indeed, the policy of the elective system, as applied to the Judiciary, has been frequently and gravely questioned. And that it is subject to grave objections cannot be denied; and these objections might be deemed insuperable, if fortunately any plan could be devised to secure the selection of men possessed of the necessary qualifications, learning, ability and integrity of character. But I believe no such plan is feasible or practicable; and instead of indulging in hopeless theories on the subject we should use all our efforts to remedy evils of the present system, and I can think of no better remedy than the plan of special elections, and until the adoption of this plan the people should as far as possible protect themselves from any evils which may be found in the present system.¹

The state tried this method for a number of years, but with the Constitution of 1879 went back to electing judicial officers at the general elections.

Cope moved to Oakland about 1880, where he lived a number of years while his children attended the University of California, returning to San Francisco some years later.

Cope retired from the practice in the early nineties, after which he spent a great part of his time on his large fruit and nut ranch near Danville, in Contra Costa County, which became one of the show places of this area.

W. W. COPE
Thirteenth Justice
Sixth Chief Justice

Cope died at his home in San Francisco January 17, 1903. His wife had died a year before to the day. His remains were cremated and at his request the ashes mingled with those of his wife. Her going was one of the hardest blows suffered by Cope in his entire life. Six of the nine children survived him.

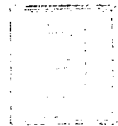
So far as known, Cope did not affiliate with any church or fraternal organization. He was public-spirited in a high degree, as shown by his activities in other lines. He was a Democrat, but Bryan's doctrine of sixteen to one was more than he could take. He voted for McKinley, but confessed he very much disliked to do it.

Cope was six feet tall, straight, and well built, weighing about two hundred pounds. His eyes were gray. His hair was of a fine, almost silky texture, and, as it grayed, added to his distinguished appearance. Many considered him the most handsome man in San Francisco. He was courtly and dignified, but not unbending. He was genial and possessed a fine sense of humor.

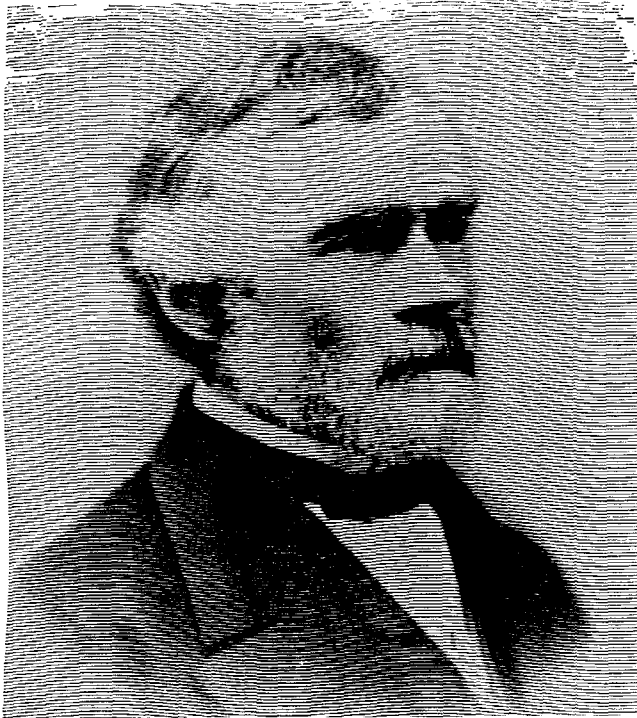
Cope's was a successful, useful career. No man was ever more self-made. His life began in humble circumstances and closed with a record of high achievement, both as a lawyer and as a citizen and man.

FOOTNOTE

1. *Sacramento Daily Union* (Aug. 13, 1859), 1, col. 6.



THE CALIFORNIA JUSTICES



Edward Norton

Edward Norton was born in Canandaigua, New York, October 29, 1808, and was the son of Ebenezer F. and Abigail (Kibbe) Norton. Ebenezer F. Norton was one time Congressman from New York. Norton came from a home and community of culture and refinement. There were several children in his father's family.

Norton's family moved to Buffalo in 1815, where his father became a leading lawyer and one of its most prominent citizens. He held many positions of trust, both in a private and public capacity. It is not improbable that Norton spent some time in Washington the period his father was there.

Upon completing his preliminary education, Norton entered Union College, where he made an excellent record, both in his regular studies and extracurricular activities. His talents ran along literary lines, and he was one of the organizers of Sigma Phi literary fraternity.

Norton appears to have studied his law in Buffalo, not improbably in his father's office. His legal education seems to have been as methodical as his academic education had been. From the first he took a high place among the Buffalo Bar. Men like Millard Fill-

more, later President of the United States, practicing there at the time, are reported to have considered him possessed of the finest legal mind of any young man known to them. In 1840 Norton left Buffalo and went to New York City where he continued in the practice until 1849. Here he developed into a lawyer of the first order.¹

In 1849 Norton joined a number of other men in forming a company to come to California to mine for gold. They left New York in March, coming overland by the southern route as far as Yuma, where they took a ship down the Gulf of California into the Pacific, and then up to San Diego and San Francisco. He arrived in San Francisco in January, 1850. He was in Yuma on November 13, 1849, and there voted for the adoption of California's first Constitution. He was, therefore, a forty-niner. He had walked the last four hundred miles to Yuma.

If Norton engaged in mining it appears not to have been for a long period. He took up the practice in San Francisco and soon attained prominence. He appears to have had a close call of becoming a justice of the Supreme Court of California as early as 1851, at the time Bennett, a former Buffalo townsman of Norton's, resigned. It is said Bennett would not have left the Court if he had known that some one other than Norton was to be appointed in his place. In 1850 Norton was appointed the first judge of the twelfth judicial district court, and was later elected for a full six-year term. The jurisdiction of this court extended over San Mateo County and a portion of San Francisco. It was in this court that he acquired his greatest renown as a judge. As illustrative of his performance in this court it has been mentioned how he came on the bench one morning with papers relating to fifty-six cases. Taking each case, one by one, in their order, without reference to any notes, he rendered decisions in each of them, reciting the facts accurately, and fully and clearly stating the questions of law involved. John Currey mentions the clearness and conciseness with which he recited facts and elucidated the law.² He came to be regarded everywhere as the embodiment of impartiality and soundness.

Satisfactorily, however, as Norton discharged the duties of this office, he tired thereof and in due course refused to become a candidate to succeed himself. When he left the court in 1860 the praise given him in connection with his judicial labors was unstinted.

EDWARD NORTON

Fourteenth Justice, November 25, 1861-January 1, 1864

The bar passed resolutions declaring in part that his work had "enlarged the general confidence in the Courts, and added lustre to the Judiciary of the State."³ He was asked to sit for a portrait to be hung in the courtroom in which he had presided. This painting by David Huntington was apparently destroyed in the fire and earthquake of 1906. Commenting on the fine work of the painter at the time it was completed, attention was called to Norton's expressive eyes. Perhaps this was his most prominent feature.⁴

Upon leaving the district court Norton went to Europe for a vacation. While he was gone he was nominated by the Republican Party to be a justice of the Supreme Court of California, and elected in the election of 1861. This is one instance in the history of California where the office literally sought the man. Field was the Chief Justice and Cope the other associate justice when Norton came to the Court.

For some reason Field and Norton did not hit it off very well together. Field went so far as to say that Norton was of a type not adapted for appellate work, being too dependent on precedents, regardless of their soundness.⁵ There is much food for thought in the situations that developed with regard to Norton in the different courts in which he served, receiving the acclaim he did in the one and the way he was belittled in the other. Such, however, is life. The man of real understanding is not too elated when all is praise or too dejected when it is condemnation, but continues to follow the even tenor of his way, permitting his true character and works to become his final spokesmen.

Norton served on the Supreme Court from November 25, 1861, to January, 1864. A few of his opinions have found their way into the casebooks. *Kenyon v. Welty* 20 Cal. 637, may be found in Dean James Barr Ames' *Cases on Equity Jurisdiction*.

Upon leaving the Court Norton took up the practice in San Francisco. After a few years at the bar he went to Europe. He died in London May 12, 1872. His passing was noted with respect by the press and bar in San Francisco.

Apparently Norton never married. A brother's widow, and nieces and nephews, were spoken of as his next of kin at the time of his death.⁶

With all his gifts, Norton had one great handicap. He was reserved and socially reticent in the extreme. His sustained silence as others were free in their social intercourse became the subject of comment. He became the butt of a number of jokes in this regard. Despite this handicap, Norton had no end of warm friends and admirers. When approached he was friendliness itself without any trace of affectation or false dignity.

No list of the ablest trial judges that have appeared in California would be complete without Norton's name. His was one of the more impressionable and sensitive natures represented in the men who have to date been the justices of the Supreme Court of California.

FOOTNOTES

1. *Alta California* (Sept. 4, 1872), 1, col. 4.
2. Political History, MMS, State Library. See also *Alta California* (Sept. 4, 1872) 1, col. 4.
3. *Daily Alta California* (Dec. 18, 1860), 1, col. 1.
4. *Ibid.* (Dec. 25, 1861), 2, col. 1.
5. Shuck, *California Anthology*, 346. "Edward Norton was the exemplar of a judge of a subordinate court. He was learned, patient, industrious and conscientious, but not adapted for an appellate tribunal. He had no confidence in his own unaided judgment. He wanted some one upon whom to lean. Oftentimes he would show me a decision of a tribunal of no reputation, with apparent delight, if it corresponded with his own views, or with a shrug of painful doubt if it conflicted with them. He would look at me if I told him that the decision was not worth a fig; and would appear utterly bewildered at my waywardness when, as was sometimes the case, I refused to look at it after hearing by what court it was announced."
6. *Alta California* (Sept. 4, 1872).

THE CALIFORNIA JUSTICES



E. B. Crocker

Edwin Bryant Crocker is one of the two or three most striking and colorful men who have served on the Supreme Court of California. For courage and boldness he stands unsurpassed. On the big issues he always came out the winner. No man who has served on the Court ever had occasion to experience the feelings of champion more than he.

This is not saying he was a complete stranger to defeats. In his case, however, a setback in one department was as likely as not to be followed by a brilliant success in some other, as may be illustrated by the way he promptly joined forces with the Big Four who built the Central Pacific Railroad when popular demand for his services on the Court was not such as to justify his giving much thought to succeeding himself. He not only kept up his end in this tremendous undertaking but succeeded as well in winning thereby an immense fortune.

Crocker was born in Jamesville, New York, April 28, 1818. His father's name was Isaac. There were five children in the family, four boys and one girl. Their accomplishments in life were sufficient to make this one of America's outstanding families.

In Crocker's boyhood his family moved to Troy, New York, where he became a student in Rensselaer Institute, where he is said to have received an A.B. degree in civil engineering. From Troy, Crocker's family moved to Detroit, where the father without great success carried on a mercantile business, and from there to Indiana.

After completing his school work Crocker was employed for some time in connection with the construction of some railroads in the East. He rejoined his family when they moved to Indiana and helped them clear a new farm. This was probably about 1840.

Crocker became dissatisfied with the engineering profession, whereupon he went to Fort Wayne and took up the study of the law in the office of a lawyer by the name of I. L. Jernegan. As things turned out, he came to well need the training he received both as an engineer and as a lawyer. He is reported to have been admitted to the bar in 1842. Upon his admission he became associated in the practice with his preceptor. This association continued until Mr. Jernegan moved away, when Crocker took over his business.

In Indiana Crocker became a strong antislave man, and did all he could, both as a lawyer and one opposed to slavery, to help fugitive slaves passing through Indiana to get to Canada and freedom. For his activities in this regard he was on one occasion required to pay substantial damages to some slave owners.

Crocker was first married to Mary Norton of Canandaigua, New York, connecting him by marriage to Edward Norton, an associate with him the period he served on the Court. They had one daughter. Mrs. Crocker passed away before Crocker came to California.

Crocker remained in Indiana until 1852, when he decided to come to California. He was then a lawyer of ten years' experience and about thirty-four years of age. He came by way of New York and the Isthmus. On the way he was married to Margaret Eleanor Rhodes in New York City by Henry Ward Beecher. He settled in Sacramento where his younger brother Charles and Leland Stanford were becoming established in the mercantile business. Here Crocker became associated in the practice with John H. McKune and Robert Robinson. In 1856 Crocker and his partner, Mr. Robinson, got out a digest of the

E. B. CROCKER

Fifteenth Justice, May 21, 1863-January 1, 1864

California laws, the first one to appear in California. At the end it carried a full page advertisement setting out that his firm would attend to business in the Supreme Court and the district courts of Sacramento, Placer, El Dorado, and Yolo Counties, "upon the most reasonable terms."

Crocker had not been in California long before he began interesting himself in politics. In 1855 he was prominent in the activities of the "People's Party of California," a temperance party. He urged "all moral, religious, and temperate men"¹ to support the candidates of this party. In 1856 he became one of the leaders in organizing the Republican Party in California. His name headed a list of twenty-two persons on a call sent out in March, which has been called the birth certificate of the Republican Party in California.² Soon thereafter a mass meeting convened in Sacramento, presided over by Crocker. Crocker was permitted to make his opening remarks, but when the speaker following him began to address the meeting it was forcibly broken up by opponents of the movement. A short time after this there was distributed on the streets of Sacramento a handbill calling all true and patriotic Americans to arms, and inviting the people to attend a mass meeting for the purpose of considering ways and means of protecting the community, and appointing a committee to hang such of the "traitors" as would be necessary to put a stop to the "treasonable practices"³ going on. It was amid scenes like this that the Republican Party came into existence in California. Crocker continued to take an active part in the party's activities for a number of years, serving on important committees, stumping in elections, and otherwise aggressively supporting its militant program. He was an able campaigner and did not mince words when speaking of the opposition. He is one of the men to whom much credit is due in making California a strong supporter of Lincoln and the Union during the critical Civil War years.

Upon Field's appointment to the Supreme Court of the United States in March, 1863, Governor Stanford appointed Crocker an associate justice of the Supreme Court of California. Crocker served in this position until the following January, a period of about seven months. Some two hundred and thirty-seven opinions written by him during this period appear in the official reports of the Court. This is several times more opinions than good judges were

putting out in a whole year, and an average of about one and one-fourth opinions for each working day that he was on the Court.⁴ He holds the all-time record in the rapid production of opinions in this Court, and not improbably in all judicial history. Despite all the complaining mankind has done through the ages as relates to the law's delays, the speed of the Court at this time was not favorably received in many quarters. Crocker was severely criticized, and there were those who were outspoken against speedy justice as against slow justice.

A small sample of *Alta California's* appraisal of his work at the time he left the Court may be found in the following words:

The appointment of E. B. Crocker to be Justice of the Supreme Court, to fill the vacancy occasioned by the resignation of Chief Justice Field, was one of the most unfortunate acts ever committed by a Governor of this State, and inflicted as deep a wound as the people of our commonwealth could ever receive.

His name will continue to be uttered, if only in derision. When his opinions are cited, counsel will reply apologetically, "That's not the Supreme Court, that's only Crocker." Judges will smile with melancholy good humor, as they whisper to each other on the bench, "That's not law; that must be Crocker." And posterity will point to this sad period in the judicial history of our State, as a convincing illustration of the propositions: that weakness is more pernicious than corruption; that blunders are often worse than crimes; and that speedy injustice is not better than slow justice.⁵

Notwithstanding the dispatch with which Crocker put out his opinions a goodly representation of them have been selected by leading casebook writers as constituting correct expressions of the true rules. How did he do it! John Currey, later a justice of the Court, has given a clue. "It was his habit," he writes, "to take to his chambers a lunch basket, in order to save to himself the hour usually set apart as the time for luncheon. If a case had been well argued by the counsel in his brief, Justice Crocker's habit was to follow it closely provided he agreed with such counsel in his conclusions."⁶

Upon leaving the Court, Crocker became the attorney and general agent, the latter an executive and administrative position of importance, for the Central Pacific Railroad. He also became closely associated with his brother Charles in the actual construction operations and spent a part of his time in the field where the physical work was going on. He discharged his heavy duties to the railroad with the same energy that he had helped fugitive slaves

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E. B. Crocker and Family in Germany

escape, directed the affairs of the Republican Party, and put out the work of the Supreme Court. Of course, he could not maintain this pace forever. He collapsed one evening in 1868 on the stairs of the Lick House in San Francisco. While he lingered on in life for a number of years he was nevertheless a permanently broken man. He was fifty at the time, the age at which a man is ordinarily at his best mentally.

Crocker and his family went to Europe as soon as he could travel, making their home in Dresden for some time. In Europe he recovered sufficiently to enable him to gather together a considerable art collection. Some of the paintings, and especially the etchings, are among the finest of the world's masters. This art collection was brought to Sacramento and set up in a building he had especially constructed for this purpose. It gave him a great deal of pleasure to contemplate them as he could his last days. After his death these paintings and his old home were donated by his wife to the City of Sacramento and the State of California.

Crocker died in Sacramento, June 24, 1875. He left surviving him his wife and four of his daughters. One of his daughters, and only son, had predeceased him. The funeral took place from his home and was under the direction of Rev. I. W. Dwinelle of the Congregational church. His remains were interred at the City Cemetery in Sacramento.

Crocker's brother Charles looked after his brother's financial interests upon Crocker's death. The large fortune Crocker had accumulated before his death continued to grow, with the result that he left all the members of his family affluent in a high degree. No

man that has been a justice of the Supreme Court of California ever amassed so large a fortune.

While Crocker became wealthy, his tastes nevertheless remained simple to the last. He was by disposition cheerful and easily provoked to laughter. While he drove himself ruthlessly he was not of the stern and hard type. In build he was stocky and corpulent. He never used liquor in any form. He was a man of generous heart. He paid no attention to the popularity or unpopularity of any cause. His only yardstick was how did the principles of a cause square with his convictions. If they squared he went all the way. He was an exceedingly hard hitter. He never did things by halves. He is one of the most interesting figures produced by the early day west.

Crocker's disposition to express himself without reserve cropped out prominently in his daughter Aimée (Princess Galitzine).⁷

FOOTNOTES

1. Winfield J. Davis, *Political Conventions in California*, p. 47.
2. Phillips, *Life of Cornelius Cole, California Pioneer and United States Senator* (1929), p. 76.
3. *Ibid.*, p. 98.
4. For the fiscal year 1945 the seven-man Supreme Court of California put out 191 written opinions; for 1946, 160. Eleventh Biennial Report Judicial Counsel of California, December 31, 1946, 76.
5. *Alta California* (Jan. 6, 1864).
6. John Currey, *Political History of California*, Manuscript, State Library, Sacramento.
7. *And I'd Do It Again*. Coward-McCann, Inc., New York (1936).



Margaret E. Crocker

SILAS W. SANDERSON

Sixteenth Justice,¹ January, 1864-January, 1870
Seventh Chief Justice, January, 1864-January, 1866



Silas W. Sanderson

Silas Woodruff Sanderson was born April 16, 1824, in Sandgate, Vermont. His father's name was John H. Sanderson. He attended Williams College from 1842 to 1845, where he acquitted himself as a good student. He had a part in the "Junior Exhibition" in 1845, at which time he gave an oration on the subject of "Natural Equality." While at Williams he wrote a number of articles that were published in the college paper. He was registered at this time as from Sunderland, Vermont. From Williams he went to Union College, from which he graduated in 1846. Apparently Sanderson acquired his legal education in New York. Shuck states he attended "the State and National Law School" established at "Cherry Valley," New York, and conducted by John W. Fowler, "a noted lawyer and orator."² Bancroft states that he was admitted to the bar in Albany, New York, in 1849, but commenced practice in Jacksonville, Florida.³ He is reported to

have had a brother here, and to have acted for a period as secretary of the state Senate.

Sanderson came to California in 1851, settling in Placerville, then one of the important communities of the state. He is reported to have tried his hand at mining for awhile, but to have soon entered the practice of the law. In 1859 he became district attorney for El Dorado County. Sanderson was at first a Whig, but as this party disintegrated he became a Democrat. Although a northern man, he was in 1861 lined up with the southern wing of this party. This group, however, became so extreme in its pro-slavery sentiments that he found it impossible to continue on with it. The final parting of the ways came in the Breckenridge convention held in Sacramento in 1861, where he was a member of the committee on resolutions. As a member thereof he drafted a report approving the platform of the Democratic national convention at Baltimore of 1860 except as it foreshadowed the doctrine of secession. His report closed with the statement that California was "unalterably attached to the union of the United States, and that she repudiates and spits upon the idea of a Pacific republic."⁴ The report proved unacceptable to the committee, which included extremists like Solomon Heydenfeldt, A. P. Crittenden, Tod Robinson, etc. Single-handed, Sanderson put up a strong fight on the floor, but his report received only two votes, his own probably, and one other. The report which was accepted recognized the right of secession. It severely castigated Lincoln. One delegate proposed an amendment calling for the impeachment of Lincoln by the next Congress. When another observed that Lincoln deserved to be impeached "in hell and heaven as well as on earth," "the remark was received with applause."⁵

Sanderson thereafter became affiliated with the Union wing of the Democratic Party and elected as such to the Assembly in 1862. His name has become permanently associated with the so-called specific contract law, passed by the Legislature in which he served, which permitted the making of contracts calling for the payment of obligations in gold. By 1863 he was an out-and-out Union man, and running on this party's ticket in the judicial election of that year was elected one of the five justices of the Supreme Court of California to take the place of the three-judge court as originally set up by the Constitution of 1849. The others elected, all Union men, were John

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Currey, Augustus L. Rhodes, Oscar L. Shafter, and Lorenzo Sawyer.

The law under which these men were elected provided for ten-year terms, with the terms of the first five going in running respectively two, four, six, eight, and ten years, to be determined by lot, so that there would be a justice elected every two years. Sanderson drew the two-year term and thereby became the Chief Justice. As the term of the Chief Justice expired, the one that had drawn the next shortest term became the Chief Justice. As Sanderson's two years were coming to an end he became the Union Party candidate for a regular ten-year term, and was elected over Henry H. Hartley, Democrat. Currey then became Chief Justice. Sanderson served as an Associate Justice until January, 1870, when he resigned. The Court Sanderson had been a part of the six years he had served was one of the strongest the state has had. Sanderson contributed his share of able opinions, and a number of them on various branches of the law have found their way into the standard casebooks.

Upon leaving the Court Sanderson took up the practice in San Francisco. His work on the Court had been such as to impress the best, and he became attorney for the Central Pacific Railroad. His retainer from the railroad is said to have been a thousand dollars a month. As a practicing lawyer his prestige increased. William M. Evarts, associated with him in some of his cases in the Supreme Court of the United States, is reported to have spoken of him as "one of the ablest jurists in the United States."⁶ It would be hard to conceive of a much higher compliment as relates to legal ability coming from a man of Evarts' standing.

Sanderson died suddenly in San Francisco from heart trouble and dropsy, June 24, 1886. Although he had felt poorly for some time his death was apparently unexpected, and his entire family was in Europe at the time. He left surviving him his wife, Margaret Ormsby Sanderson, and four daughters, Sibyl, Jennie, Marian, and Edith. Sanderson's funeral took place from his home on Octavia Street under the direction of A. O. Meldrum of St. John's Presbyterian Church, and his remains interred at Laurel Hill Cemetery. Sanderson chose his own epitaph, the simple words, "Final Decree."⁷

Sanderson's daughter Sibyl acquired world fame as a singer. She was especially popular in the European capitals. A short time before Gertrude Atherton's death there appeared in the *San Francisco Call-Bulletin* two articles by her relating to Sibyl, accompanied by a number of likenesses showing her in various operatic roles.⁸ She commented prominently on her beauty and engaging personality. While Sibyl possessed a "pure and sweet voice" and great "charm of manner,"⁹ she apparently did not possess the greatest gifts as an actress. She married a wealthy Cuban planter¹⁰ who died a short time after their marriage. Their only child died in infancy. Sibyl, who made Paris her home her last years, passed away there at the early age of thirty-eight in 1903. With all her triumphs of achievement there was also mixed therewith much of the tragic.

Sanderson was by nature bold and aggressive. He pressed his views at times with a vigor bordering on domination. Joseph B. Crockett, associated with him on the Court for a period, mentioned how he would "rip and snort around in the consultation room, when he got his dander up."¹¹ His summary mode of expression sometimes even found expression in his opinions. In *Hallock v. Jaudin* 34 Cal. 167, which without much ado overruled some earlier cases, he wrote in part: "There are some cases, no doubt, which support the theory of the learned counsel for the respondents, but we have no respect for them." Idioms of his day scarcely understood by a later generation also sometimes found expression in his opinions. In this same case he admitted that while the complaint could have been "more artistic and logical" it would be "sticking in the bark" to hold that it was "radically defective." Despite the aggressiveness with which he often pressed his views he was liked by his brethren. It was not unnatural, however, that those who did not know him often thought him "reticent and sometimes brusque."¹²

Sanderson left an estate of some \$175,000. This was not large considering the financial giants with whom he was associated his last years. It is said his family expenses were high and that it worried him lest he should not be able to accumulate enough for their needs. Sanderson's career was consistently on the upward incline all his life. He made no mistakes that cost him permanent prestige and standing.

SILAS W. SANDERSON
Sixteenth Justice
Seventh Chief Justice

FOOTNOTES

1. As five men came to the Court at the same time Sanderson did, he cannot technically be said to have been the sixteenth man to come to the Court any more than any of the other four. He has been so designated, however, because he drew the shortest term and would in the ordinary course of events be the first to leave the Court, for the purpose of keeping the chronological sequence regular.

2. *History of the Bench and Bar of California* (1901), pp. 494, 495.

3. Bancroft's Works, *History of California*, Vol. VII, 1860-1870, p. 235 (footnote).

4. W. J. Davis, *Political Conventions in California*, p. 166.

5. *Ibid.*, pp. 169, 170.

6. *S. F. Call* (June 25, 1886).

7. *American Weekly (S. F. Examiner)*, May 19, 1946, 16.

8. *S. F. Call-Bulletin* (Oct. 31, Nov. 1, 1947).

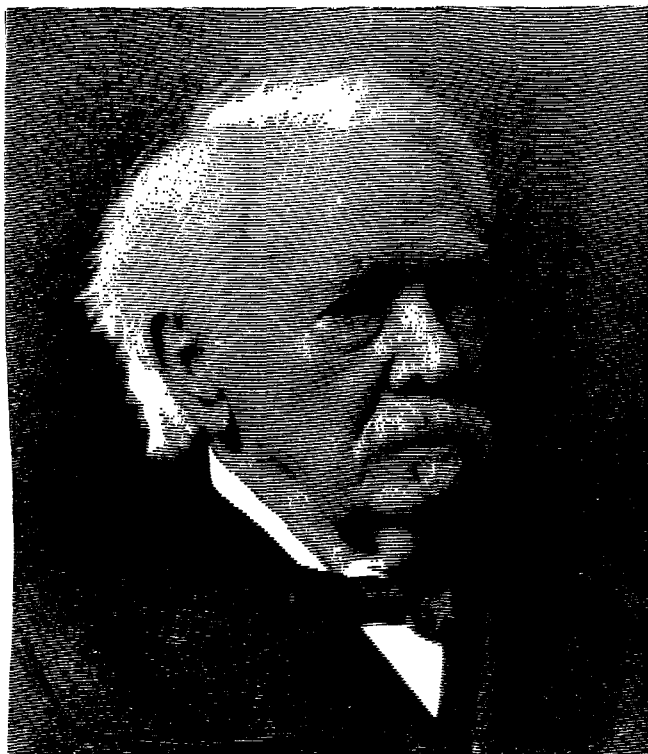
9. *Dictionary of American Biography* (1935), Vol. XVI.

10. Antonio Terry.

11. *Life, Diary and Letters of Oscar Lovell Shafter*, p. 231.

12. *S. F. Call* (Aug. 31, 1886), 5, col. 4.

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John Currey

John Currey was born in Cortlandtown, Westchester County, New York, October 4, 1814, and was the son of Thomas and Rebecca (Ward) Currey. He and his twin brother, James, were two of nine children. On his mother's side Currey descended from Andrew Warde, who came from England early in the seventeenth century, and was also a progenitor of Henry Ward Beecher.

Currey received his elementary education in Peekskill. He attended Wesleyan University at Middletown, Connecticut, part of one year. He studied law three years in the office of William Nelson of Peekskill, at one time a Congressman from New York. He was admitted to practice about 1842 and practiced in Peekskill in association with Edward Wells.

In 1845 Currey married Cornelia Elizabeth Scott of Chazy, New York. Their eldest son, Montgomery (Monte), was born in Peekskill.

Currey moved to Kingston, Ulster County, New York, about 1847. There he became associated with Theodore R. Westbrook. With the discovery of gold in California, he decided to take a six months' trip to investigate first hand. He had worked hard, was

somewhat run down physically, and felt the need of a good rest.

Currey left New York by steamer in June, 1849. He arrived in San Francisco by way of the Isthmus in August. He found San Francisco practically deserted. After ten days he, too, left for the mines. At Mormon Island, he found mining harder work than he could stand. He joined a timber expedition upon the Sacramento River, but having misgivings about the timber project and not feeling well, he returned to San Francisco. There he suffered a severe sick spell.

Afterwards Currey practiced in San Francisco in association with Richard V. Groat and James S. Carpenter. Currey's name appears in the first directory of San Francisco, Kimball's directory of 1850. He succeeded at the bar, and in 1851 returned to New York for his family. Meanwhile, the fires of 1851 had swept over the city and destroyed his books. Finding his clients reduced in means and scattered, he went to Benicia, the center of much Spanish and Mexican grants litigation. His success in his share of this litigation often aroused the resentment of squatters. Some of them took a threatening attitude towards him. He referred to this period of his life as stormy and sometimes dangerous. Receiving a percentage of the lands for which he settled titles, Currey acquired a handsome farming land holding of several thousand acres on the Putah Creek, near Dixon, which gave him a fine income the rest of his long life.

Although busy as a lawyer, Currey took an active part in politics. At first he was a Whig. He was mentioned for the Supreme Court of California as early as 1853. In 1854 he served on the committee on resolutions in the Whig convention. His name was mentioned for the Supreme Court in the Know Nothing convention of 1855. In 1858 he ran for a justice of the Supreme Court but Joseph G. Baldwin defeated him. In 1859 he became the Anti-Lecompton candidate for governor. In the bitter campaign he worked shoulder to shoulder with Broderick. He had no use for Terry and never forgave him for killing Broderick. Although Currey showed some ability as a stump speaker, he did not like campaigning or politics. He was defeated by Milton S. Latham. While Currey opposed slavery, he was not as radical as some. He believed that slaves could not be given the rights and privileges of citizens without education and at least some experience with liberty.

JOHN CURREY

Seventeenth Justice,¹ January, 1864-January, 1866

Eighth Chief Justice, January, 1866-January, 1868

Currey moved to San Francisco in 1861, where he continued in the practice.

In 1863 Currey, running on the Union ticket, was elected one of the five new justices of the Supreme Court of California, taking his place on the Court in January, 1864. In 1866, upon the retirement of Sanderson as Chief Justice, he became the Chief Justice. Later he was defeated for a ten-year term as associate justice by Royal T. Sprague, the Democratic candidate. Currey's work on the Court has received high praise. As illustrative, John Norton Pomeroy characterized his discussion in *Daggett v. Rankin* 31 Cal. 321, as "an admirable statement" of the rule under consideration.² A number of his opinions have been selected by casebook writers to illustrate the rules.

Upon leaving the Court, Currey resumed the practice in San Francisco, becoming associated with Oliver P. Evans. A short time before he left the Court he was appointed by the Legislature one of three commissioners to revise and compile the laws of the state. He served on this commission until it was superseded by the codification commission, the work of which resulted in the codes of 1872.

Williams College in Massachusetts conferred an honorary LL.D. on Currey after he left the Court. This must have been a specially sweet morsel for Currey, having had to leave college his first year for lack of means. He had desired above everything else to complete a college course.

After he left the Court, Currey had trouble with his eyes, which worried him a great deal. He also fancied he was losing his hearing. In fact, he feared his physical strength generally was breaking down. He consulted the best doctors. With over forty years of active life still before him, he seriously considered retiring. However, he wanted to remain in the practice long enough to help his son, Monte, get initiated. Monte was at this time in college. Besides, the demands for Currey's services were such as to make it hard for him to give up. His eyes never regained their full strength, but he nevertheless continued on in association with Mr. Evans for ten years. In the early eighties he virtually retired from the active practice. Thereafter he was generally set out as a capitalist in the San Francisco directories.

Currey's wife died in 1877. In 1881 he married Cornelia Ferris of Peekskill, a granddaughter of his

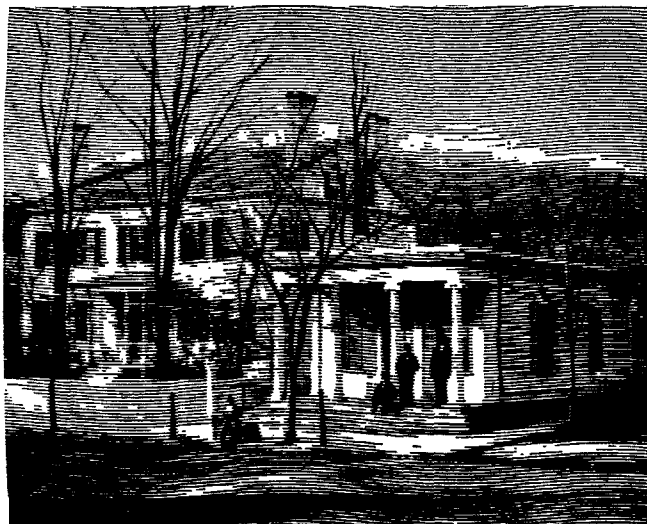
old preceptor, William Nelson. She was some years Currey's junior.

While Currey retired from the active practice, his interest in the law and public questions did not flag. He followed closely the Fair will contest in 1902. He wrote a forty-eight-page criticism of the Supreme Court's decision disinheriting certain relatives which Fair had included in his will. It was published in pamphlet form and distributed, apparently at Currey's own expense. It was in form and substance similar to articles in present-day law reviews.

In 1909 John H. Wigmore wrote a letter criticising the Supreme Court of California, and particularly Chief Justice Beatty, in connection with a Schmitz-Ruef decision. Wigmore took the view that the Court should have taken judicial notice of the fact that Eugene Schmitz was mayor of San Francisco and Abraham Ruef its political boss. But Currey defended the Court and mentioned that no less legal authorities than William H. Taft and Elihu Root were of his view. In 1912, when ninety-eight, he gave his views, seriously questioning the constitutionality of the recall law. He had some misgivings about big corporations. He declared he had no malice towards the railroads, but felt deeply disgusted and offended at times with the arrogance of many of the railroad men, including Stanford, who had become rich and powerful by the donations of the people. The great railroad strike of 1893-1894, and the chaotic conditions accompanying the hard times of this period, worried him a great deal. He was inclined to lay the blame on the corporations for their greed. He deplored the waste going on in private and public life, the increase in crime, and the drift towards communistic revolution. The late Garret McEnerney told the writer one day at a bar luncheon in San Francisco, how he frequently saw Currey at the important trials going on in the city, and how he would sit with his hand cupped over his ear to catch all that was going on. He spoke of his alertness and interest in the doings of his day.

Currey died at the home of his son Robert in Dixon on his Putah Creek ranch December 18, 1912, aged ninety-eight past. He had hoped to round out a full hundred years of life. From the fact that he had slipped and fallen in a store in Dixon sometime before his death a report got out that the end had come as a result of an accident. His death, however, seems to have been due to causes superinduced by age. Sur-

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*William Nelson's office in Peekskill, New York,
where Currey studied law.*

viving him were his second wife and two of his four children, Robert and Julia. Monte and a little son Charles had died many years before. Currey's body was cremated.

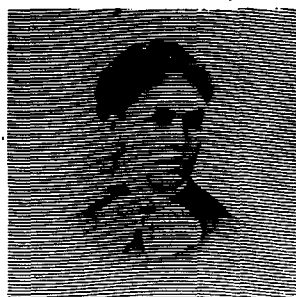
In appearance Currey was of light complexion, with sandy hair and blue eyes. He was stocky, with a short, thick neck and large shoulders.

In his last years he liked to write about his early days in California and left several manuscripts. One rather full statement was lost in the San Francisco fire of 1906, and never rewritten. His granddaughter, Laura Currey Sargent, told the writer how it moved her to see her old grandfather's long mustache dragging on the manuscript because he had to put his eyes so close to the paper to see. Currey was

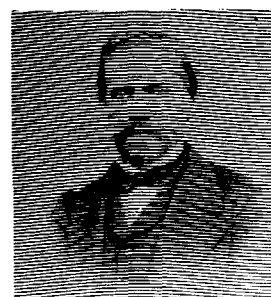
fond of young people and liked to be around them to the last. He liked to dwell on legal above all other problems. His political associates almost lost patience with him when he was running for Governor; he had so little of political import to report from his stumping trips, but he would proceed almost at once to comment on some legal question that had occupied his mind the while. As a lawyer he was stoutly aggressive and an exceedingly hard worker. He himself ascribed his success in the law to the pains he went to in preparing his cases. Currey had a poetic side and at least one or two of his poems on philosophic topics have been published.³ While a believer in the Bible, and well acquainted with much thereof, he apparently affiliated with no church. Apparently he belonged to no fraternal organization. He left a sizable estate, probably approaching a million dollars in value.

FOOTNOTES

1. Not strictly seventeenth justice, but so designated to keep chronology consecutive.
2. *Higgins v. Manson* 126 Cal. 467, at 470. 58 P. 907, at 908, col. 2.
3. 'The Cosmos, *Overland Magazine* (July, 1897).



Cornelia Elizabeth Currey



John Currey when younger

LORENZO SAWYER

Eighteenth Justice,¹ January, 1864-January, 1868

Ninth Chief Justice, January, 1868-January, 1870



Lorenzo Sawyer

Lorenzo Sawyer was born on a farm at or near LeRoy, Jefferson County, New York, May 23, 1820, and was the oldest of Jesse and Elizabeth (Goodell) Sawyer's six children. It may be assumed that he acquired the rudiments of his education in the common school of this community. There was in the neighborhood a good library, the facilities of which he is said to have fully availed himself evenings and Sundays. He attended Black River Institute, an institution of high school rank, in Watertown, New York, one year. When he was fifteen or sixteen, his family is reported to have moved to Pennsylvania, where a new farm was procured and cleared.

At an early age, Sawyer, with the encouragement of his parents, took up school teaching, and appears to have followed this calling in New York and Ohio some eight years. In October, 1841, he entered the preparatory department of Western Reserve College, where he remained until August, 1842. He registered as from Atwater, Portage County, Ohio. He did not

enter the college proper. Sometime about 1844, he commenced the study of the law in the office of Gustavus Swan in Columbus. Before his studies were completed, Mr. Swan retired, whereupon he continued his studies in the office of Noah H. Swayne, later a justice of the Supreme Court of the United States. Sawyer is reported to have been admitted to the bar in Ohio in 1846.

Sawyer did not remain in Ohio upon his admission, however, but went to Chicago, where he became associated in the practice with James A. McDougal, later a Congressman, and still later a United States Senator from California. After a period he left Chicago and went to Jefferson, Wisconsin, where he became associated in the practice with John E. Holmes, later Lieutenant Governor of that state. Sawyer was apparently practicing here when gold was discovered in California. While not one of the very first to join the gold rush, he nevertheless made all preparations to come to California before the rush year 1849 came to a close. He left Wisconsin early in 1850, probably March or April. He reached St. Joseph May 6th, and started across the plains the same day. The California rush was at this time in its height. Sawyer estimated from the information he was able to pick up that there were two thousand wagons ahead of his party on the road they were on. He rode a mule the greater part of the way, arriving in Placerville July 20th. He kept a day-to-day diary in making the journey. This he sent to the *Family Visitor* in Cleveland, which published it. In later years it has been published in book form.²

Sawyer first went to Coloma, where gold was originally discovered in California, where he tried mining for a short time. Soon he went to Sacramento, where he took up the practice. He remained there until the fall of 1850, when he went to Nevada City. He had been there only a few months, when in February, 1851, he went to San Francisco.

The sketches of Sawyer often mention the handful of books which he brought with him, consisting, according to his son Houghton, of sixteen law books³ and a copy of Shakespeare. Like many others who crossed the plains at this time, Sawyer also found it necessary to lighten his load upon reaching the worst stretch of Nevada wastes, whereupon he abandoned these books. Later he learned they had been picked up and brought to Carson City, whereupon he went there and purchased them from the possessor. He

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brought these books with him when he came to San Francisco where they had a narrow escape from the fires of May and June of that year. To save them from the first fire he buried them in a sand lot and later recovered them. As he and his room-mate, Frank Pixley, felt the walls of their room getting hot in the second fire he threw them out and again buried them in a sand lot, but when he went to get them after the fire could not find them. He was about to conclude they were now gone for good when he learned they had been taken aboard a boat in the Bay. Once more he purchased his books. The vicissitude of these books hints well what Sawyer found himself up against when he undertook to get started in the practice here at this time. The copy of Shakespeare is still in the possession of the Sawyer family. If Sawyer kept the law books they probably ended up at Stanford University, to which he gave his law library upon his death.

In August, 1851, Sawyer returned to Nevada City, where he established himself as one of its leading lawyers, remaining there until the fall of 1853.

Sawyer evinced an interest in politics from an early age. He participated actively in Ohio for Harrison in the "Tippecanoe and Tyler Too" campaign of 1840. In connection therewith he delivered probably the first important speech of his life. What he said on this occasion accorded well with the feelings and temper of the listeners, and before he was half through delivering what he had originally planned to say was more or less swept off his feet by a thunderous applause. He concluded this was a good place to stop and forthwith closed his remarks. In later life he pointed to the incident as one time that he had exercised good judgment.

Sawyer was mentioned for Attorney General in California in the Whig convention that met in Sacramento in 1851. In the 1853 convention he was mentioned for a justice of the Supreme Court of California. When the Whig Party disintegrated, he became a Know Nothing. He became prominent in the Republican Party in California from an early day. Although not a delegate, he attended the Republican national convention in Chicago in 1860, and worked for the nomination of Lincoln.

Sawyer left Nevada City and went to San Francisco the second time in the fall of 1853, this time succeeding in establishing himself in a successful practice. In 1854 he was appointed city attorney for

San Francisco and the period he served had charge of some important litigation for the city. Apparently he practiced alone until 1861, when he became associated in the practice with C. H. S. Williams. In the winter of 1861-1862 they opened a branch office in Virginia City, Nevada, whereupon Sawyer went there. He was practicing in Virginia City when he received a telegram from Governor Stanford proffering him the judgeship of the twelfth judicial district, comprising San Mateo County and a part of San Francisco. After a short hesitation he accepted, whereupon he started over the mountains on horseback, arriving in San Francisco on a Saturday night and taking his place on the court the following Monday morning. In the election that fall he was elected for a full six-year term.

Sawyer served as a district judge until he took his place as one of the five new justices of the Supreme Court of California in January, 1864, having been elected on the Union ticket in the judicial election of 1863. He drew the six-year term, four years of which he served as an associate justice, and the last two as Chief Justice. He became the Republican candidate for a ten-year term as an associate justice as his term as Chief Justice was coming to a close, but was defeated by William T. Wallace, running on the Democratic ticket. As fortune would have it, this did not mean that Sawyer was cut off from judicial life. In 1870 he was appointed federal circuit judge for the northern district of California (San Francisco).

He was actually one of the first circuit judges in the country and the first one in the west, which fact reflects an oddity in the history of the federal judiciary. The federal circuit court was created by the Judiciary Act of 1789, but except for a short period between 1801 and 1802 the law did not provide for circuit judges until eighty years later in 1869. Circuit courts were held by the justices of the Supreme Court of the United States, each in his own circuit, sometimes in conjunction with the district judge; occasionally by the district judge alone.⁴

The circuit court was an important court since it had original federal jurisdiction in law and equity as well as in serious criminal cases; also it had certain appellate jurisdiction over the district courts whose principal jurisdiction was admiralty. Hence, while Sawyer's work on the Supreme Court of California was important and creditable, his reputation mainly stems from his twenty years as a federal judge.

LORENZO SAWYER

Eighteenth Justice

Ninth Chief Justice

In many important cases Sawyer sat as circuit judge with Stephen J. Field as circuit justice. These included the Chinese queue case and other decisions protecting Chinese against the intense anti-Mongolian feeling in California. Of these cases some account is given in the earlier sketch herein on Field. Sawyer also participated with Field in some of the Sharon divorce proceedings. Out of this case, known the world over, came the death of David S. Terry, following his assault on Field, his former colleague on the Supreme Court of California. This story is told in the Terry biography in this book. Sawyer was about as odious to the Terrys as Field was. Mrs. Terry, meeting Sawyer on the train, insulted him and pulled his gray hair, at which her husband, so he said, could not help laughing (see *In re Neagle* (1890) 135 U.S. 1, 43-44).

Sawyer rendered important decisions on his own. One of many was *Woodruff v. North Bloomfield Gravel Min. Co.* (1884) 18 Fed. 753, which enjoined hydraulic mining. The justification was that of preventing the destruction of farm lands and of the navigability of rivers by mining detritus. The case produced a long opinion the length of which was probably justified by the importance of the subject matter. It brings to mind, however, a comment by a former colleague of Sawyer's, Justice Crockett, who, writing to Oscar L. Shafter, said that "Sawyer is still writing awfully long opinions, as a Judge of the Circuit Court."⁵

In 1873 the Governor of California asked Sawyer to serve on a commission to examine the new California Codes. Field undertook this service, but Sawyer declined on account of press of business.

In 1877 Sawyer received the honorary degree of LL.D. from Hamilton College.⁶

Sawyer gave a number of important addresses during his lifetime. He was grand orator of the Masonic Grand Lodge in California in 1879 and in October of that year delivered the annual address before the Grand Lodge. He stated that while Masonry did not profess to be a religion or a substitute for religion it

was a system that inculcated the purest morals and was therefore a concomitant of all true religion. As president of the board of trustees of Stanford University, he gave the principal address at the laying of the cornerstone, May 16, 1887.

Sawyer lacked an inch of being six feet in height, weighed about one hundred and seventy pounds, was broad-shouldered and walked with a long easy stride. His eyes were blue-gray and when younger his hair was reddish brown. His voice has been referred to as pleasing and always under control.

Sawyer died at his home in San Francisco September 7, 1891, from bronchitis. He left surviving him two of his three sons, Prescott and Houghton. His son Welborn had been killed in youth when he fell through a skylight in the Lick House as he had accompanied a distinguished minstrel actor of the day, Emerson, for a friendly stroll. Sawyer's wife, Jennie M. Jones, a widow prior to her marriage to him and to whom he was married in 1857, had died in San Francisco September 18, 1876. Her maiden name had been Aldrich. She had been born in Richmond, Virginia, in 1831. She became the owner of a mine in California which was enough of a producer to enable her to send sufficient silver to Tiffany's in New York to make up her flat silverware. This silver is still in the family.

Sawyer's funeral took place from the Congregational Church in San Francisco and his remains were interred at Laurel Hill Cemetery. He left an estate of some three hundred thousand dollars.

FOOTNOTES

1. Sawyer is designated the eighteenth man to come to the Court to keep the chronology regular.

2. *Sawyer's Journal Across the Plains in 1850*, Edward Eberstadt (1926).

3. Shuck gives the number as eleven. *History of the Bench and Bar of California* (1901), p. 569.

4. See Moore's Federal Practice (Mathew Bender, 1961), 2d ed., Vol. I, pp. 9-10. See also tabulation of federal circuits, 1 Fed. Cas. x.

5. *Life, Diary and Letters of Oscar L. Shafter*, p. 231.

6. Phelps, *Contemporary Biography of California's Representative Men*, Vol. I, p. 130.

THE CALIFORNIA JUSTICES



Augustus L. Rhodes

Augustus Loring Rhodes was born in Bridgewater, New York, May 25, 1821, and was the son of James Avery and Mary (Robbins) Rhodes. He acquired all his elementary and preparatory education in Bridgewater, which included attendance at the Bridgewater Academy. He entered Hamilton College, located a few miles from his home, in 1837 or 1838 and graduated in 1841. With one other, he is reported to have stood at the head of his class. Upon graduating he went to the Southern States, where he tutored and taught in the states of Virginia, Florida, and Georgia for some two or three years, with the greater part of this time spent on a plantation in Georgia. Here he apparently prepared for the bar. He probably did his teaching in the mornings, leaving him free to pursue his legal studies in the afternoons. Rhodes found that a great part of the business of the South was done by proxy with the principals absent much of the time. He came to feel there was more leisure without sufficient purpose on the part of many than was for the country's best good.

Rhodes picked Bloomfield, Indiana, as the place to take up the practice. Here he was admitted to the

bar in 1845. The following year he married Elizabeth Cavins of Bloomfield. Her father, Samuel R. Cavins, a Kentuckian, had been one of Greene County's first settlers. While a teacher by occupation, as with many other pioneers, circumstances compelled him to mix other callings therewith, as shoe-making, farming, helping the women with the weaving, etc. Samuel Cavins had a large family, and several of his children distinguished themselves.

Rhodes practiced in Bloomfield until 1854 when he came to California. Considerations of health are said to have been his principal inducement in coming to California. His health never had been robust. It is interesting to note what long, useful lives men with more or less delicate health are often permitted to live. However, Rhodes came to enjoy good health.

Rhodes did not attempt to practice law when he first came, but acquired a farm near San Jose and took up farming. The year 1856 was a very dry one. Having a hard time to make ends meet by farming alone, he undertook to supplement it with law practice, whereupon he became associated with P. O. Minor in San Jose. It was about this time that he established his home on The Alameda, which became famous by reason of his sixty years' residence there. This was one of the so-called Commodore Stockton houses which had been brought in sections around the Horn.

Rhodes also took a part in politics and in 1857 was appointed county attorney for Santa Clara County. He became a candidate to succeed himself in 1857, but was defeated. In 1859 he was elected district attorney. The following year he was elected a state Senator, and served on the judiciary committee. As a member of this committee he had a hand in formulating a number of important constitutional provisions. He stepped directly from the Legislature to the Supreme Court of California, being one of the five men elected to the Court in 1863, taking his place, with Sanderson, Currey, Sawyer, and Shafter on the Court in January, 1864. He drew the next to the longest term, giving him six years as an associate justice, and two as Chief Justice. In 1871 he was elected an associate justice for a regular ten-year term.

In 1873 there came to Rhodes the signal honor of Hamilton College conferring upon him the honorary LL.D. degree.

AUGUSTUS L. RHODES

Nineteenth Justice,¹ January, 1864-January, 1870

Tenth Chief Justice, January, 1870-January, 1872



Rhodes' old home on The Alameda in San Jose, as it appeared in 1887. It was erected by him in 1857 and constituted his home through the years until his death, 1918.

Courtesy Alfred Barstow, grandson.

In 1879, before Rhodes' term would ordinarily have been up seven new justices were elected to the Supreme Court under the Constitution of 1879. They took the place of the five-judge court. Rhodes ran for Chief Justice on the Republican ticket, but was defeated by Robert F. Morrison, running on the Democratic and Workingmen's tickets.

Seven new men came to the Court the seventeen years Rhodes served, Crockett, Sprague, Wallace, Temple, Niles, Belcher, and McKinstry. Rhodes wrote an excellent quality of opinions, as will be appreciated when it is mentioned that opinions by him may be found in casebooks prepared by men like Dean Ames, Joseph Beale, Arthur L. Corbin, etc.

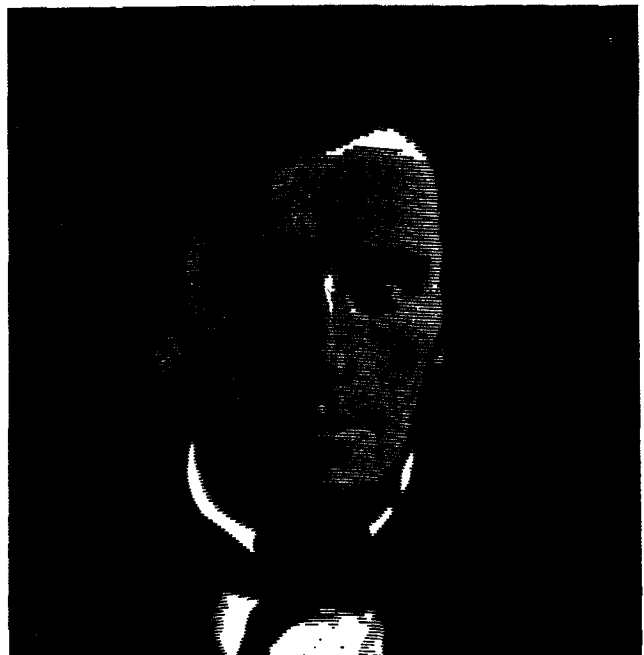
Upon leaving the Court, Rhodes took up the practice in San Francisco in association with his son-in-law, Alfred Barstow. While practicing in San Francisco, he nevertheless continued to maintain his residence in San Jose. He had a hand in some of the important litigation of this time. He represented Judge William T. Wallace in his famous grand jury fight in San Francisco, and drew a number of important property documents for Leland Stanford's widow. He was at this time spoken of "as one of the ablest constitutional lawyers of the state."² He could at this time have been appointed a judge of the superior court in San Francisco had he chosen. Some years later, in 1899, he accepted appointment to the superior court in San Jose. In 1902, backed by all

parties, the Republican, Democratic, and Good Government, he was elected for a full term.

In 1904, when eighty-three, Rhodes was tendered a reception by the Santa Clara County Bar at Hotel Vendome in San Jose, where he was spoken of as the oldest living member of the judiciary in California. John E. Richards, then a practicing lawyer, acted as master of ceremonies. John Currey, now ninety-three, the only other living representative of the five men who came to the Court in 1864, was one of the principal speakers. Rhodes must have looked back with pride on the accomplishments of this Court. All of the five judges who came to the Court when he did except Sanderson had been awarded honorary LL.D.'s from leading institutions of learning. While Sanderson was not so honored, what men the most eminent in the law thought and said of him was tantamount to such an honor.

In 1907 Rhodes resigned from the superior court, whereupon John E. Richards was appointed in his place. After a year or two of leisure Rhodes again took up the practice, this time in association with his son, Edward L. Rhodes, in San Jose.

While the bar may have felt it was honoring one aged when it feted Rhodes in 1904, it had another opportunity some fourteen years later. This was in



Rhodes as a young man

Courtesy Alfred Barstow, grandson.

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July, 1918, on the occasion of the meeting of the California Bar Association in San Jose. Rhodes was now ninety-seven. He had then recently returned from a trip East, and spoke of the respect he found manifested everywhere with regard to the work of the Supreme Court of California. Senator Roscoe Conkling's remark that there was no court in the United States of higher standing was a representative appraisal.³

The personal respect and esteem which the profession felt for Rhodes his last years is evidenced from the fact that annually on May 25th the bar would call at his old home to felicitate him on his birthday. Those who participated did not soon forget the picture of the tall, dignified, white-bearded, old man, then looking like "a portrait of an ancestor"⁴ that greeted them.

Rhodes died at his home on The Alameda, October 23, 1918, in his ninety-eighth year. He left surviving him of the six children that had been born to him and his wife, his daughter, Mary (Mrs. Barstow), and son, Edward. His remains were interred at Oak Hill Cemetery in San Jose.

Rhodes was light in complexion, his hair was dark brown, and his eyes hazel. He was by disposition kind

and friendly, but serious-minded. He was of the steady plodding type. "Rhodes plods along after his old fashion—is as pleasant as ever," wrote Crockett to Shafter in 1871.⁵ He was fond of horticultural activities. This was his best-liked hobby. He spent practically every week end for many years among his trees and plants. He used considerable tobacco. He drank sparingly, but whenever he felt like it. He was not finicky as relates to his eating, and lump sugar was a favorite between-meals refreshment. He enjoyed his three meals a day to within a few months of his passing. He was fond of anecdotes and liked to reminisce. While his tastes were intellectual, he did not give all of his life to books and learning, and was a good shot with the rifle. He was spoken of as the oldest living alumnus of Hamilton College at the time of his death, and the oldest college graduate in America.

FOOTNOTES

1. Designated the nineteenth man to come to the Court to keep the chronology regular.
2. *Woodland Democrat* (Dec. 17, 1891).
3. Mrs. Fremont Older, "When Santa Clara County Was Young," *San Jose News* (June 26, 1942).
4. *Ibid.*
5. *Life, Diary and Letters of Oscar L. Shafter*, pp. 231-32.

OSCAR L. SHAFTER

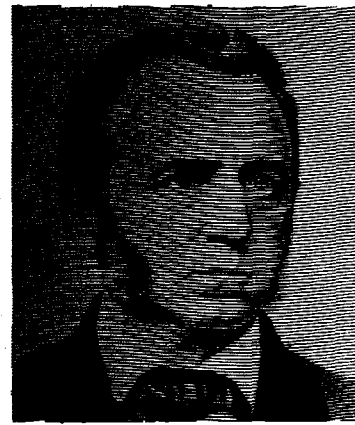
Twentieth Justice, 1864 - 1867¹



Oscar L. Shafter

Oscar Lovell Shafter tasted the sweets of professional success as fully as any man who has served on the Supreme Court of California. He participated in some of the difficult cases that came before the courts during California's first years and always acquitted himself masterfully. The ablest of the bench, not excepting Field,² were pleased to hear his views on difficult points of law. For his professional industry he was generously rewarded in a material way. The evening of his life being cut short, however, he was not permitted to enjoy the fruits of his arduous labors as long as might ordinarily have been anticipated. Struck down in physical and mental strength at a time when men often do their best work, he was forced to content himself his last years in a condition of dependency and helplessness. The general aspect of his life is not to be judged by the tragic last years, however. Taken in the whole it was anything but a frustration or defeat and quite the opposite. While he had always addressed himself severely to his professional duties, he had also found time as he lived his

life to live it somewhat abundantly. This included extended personal attention to the needs of a sizeable family and energetic participation in a number of public projects. His scholarly tastes had led him into the fields of literature, philosophy, history, and the arts and sciences. He sang well and played the piano and organ with proficiency. He was devoted to religion and education and did much to help various institutions furthering these to get off to a good start in California. That he took his religion seriously and that it was not always a path of roses would appear from the changes he made in church affiliations. He started out a Methodist. Later he became a Congregationalist, and still later a Unitarian. He associated a great deal with religious leaders and college teachers. As a contemplation of the lives of a number of the men who have been the justices of the Supreme Court of California introduces one to a great deal of important and interesting state history, a contemplation of Shafter's life more than that of any other of them introduces one to the beginnings of higher education in California. He worked closely with the founders of the College of California upon whose foundations the University of California was later erected. That his work in this regard was appreciated would appear



Oscar L. Shafter

Oscar Lovell Shafter's grave, Mt. View Cemetery, Oakland



Shafter's Shingle while in Wilmington, Vermont, before coming to California. It measures 50 inches by 15 inches.

Courtesy Bertha S. Shafter

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from the fact that the LL.D. after his name in volumes 29 to 34 of the reports of the Supreme Court was bestowed upon him by the College of California.

While it would have meant much to Shafter and family if he could have been with them a few years longer, his work was nevertheless done when he passed on. Certain it is that he left them in comfortable financial circumstances, one of the first desires of his life.

Shafter was born in Athens, Vermont, October 19, 1812, and was the oldest of William and Mary (Lovell) Shafter's children, seven of whom grew to maturity. The family moved to Townshend in Shafter's childhood, where he received his elementary education, and here it was that the family background has its principal setting.

Shafter acquired his secondary and college education at Wesleyan Academy, Wilbraham, Massachusetts, and Wesleyan University, Middletown, Connecticut. He left the latter institution in 1834 upon completing a college course. He thereupon taught school and studied law for some time, presumably in or near Townshend, but put in the whole school year of 1837-1838 at Harvard Law School, where one of his teachers was Joseph Story. He made an interesting appraisal of him in later years.³

It is not clear just what Shafter did immediately upon leaving Harvard, but he was getting started in the practice in Wilmington, Vermont, in 1840, where he met and married Sarah Riddle of Colrain, Massachusetts. They took their honeymoon by way of horse and buggy down the Connecticut River, staying with relatives as the trip progressed.

Shafter did well in Wilmington and before he was forty was commanding a full measure of influence, not only locally, but also on a statewide basis. Looked up to professionally, not without influence politically (he served in Vermont's Legislature in 1853 and was mentioned for Governor, Congressman, and for the United States Senate), financially independent, and possessed of a fine home and farm, the latter well stocked with highly-bred farm animals, a lovely growing family, everything was going his way.

In the midst of this satisfactory life he received a letter one day from his friend, Trenor W. Park, who had gone to California and was now a member of the great law firm of Peachy, Billings, Halleck & Park.

(This was the Halleck of Civil War fame.) He was offered \$10,000 to work a year in this firm. By New England standards this seemed a fortune. After a severe tussle with the spirit he decided to come to California for a year. He left his family behind and came by way of New York and the Isthmus in 1854. He went to work within the hour upon arriving. He liked it and worked with tireless energy every day, Sundays, holidays and all, far into the evenings. At the end of the year he decided he could not leave what he had gotten into. A little later he and Park formed their own partnership. He sent for his brother James Mc. (popularly spoken of as James Mack) to join him, and his wife and children. Later Solomon Heydenfeldt joined them. (Other men were also associated with him in the practice through the years.) They did well and the firm, not unlikely through litigation tailing in with Mexican grant litigation, became the owners of a ranch of many thousands of acres in and around Inverness and Point Reyes in Marin County.

Shafter lived in San Francisco a short time upon his family coming to California. After a time he built a commodious home in Oakland on the west shore of Lake Merritt.

In Vermont Shafter's legal problems had come to be scarcely more than routine to him. His experiences in California proved entirely different. Exceedingly tough problems calling for all that he could muster in labor and ability arose in connection with about everything that came along. Nor had he ever before found himself in the midst of such a host of high ability aspiring for a first place in the profession.

While highly successful at the bar Shafter came after about ten years of intense application to feel the desire for some respite, and when his name was put up for one of the five justices of the new five-man court in 1863, he looked forward to what he anticipated might prove a little easier life.

Shafter drew the longest term of the five men who came to the Court when he did in January, 1864, namely, the ten-year term. He served as a justice until December 31, 1867, when he resigned because of failing health.

While Shafter's work on the Court was of a high quality and several of his opinions have found their way into the leading casebooks of the country, he did not make the showing on the bench that he had at

OSCAR L. SHAFTER

Twentieth Justice

the bar. His brother Jim (who also made a great name for himself at the California bar) ascribed his breakdown to "inordinate labor in his profession."⁴

Upon leaving the Court Shafter's younger children were placed in private schools in Massachusetts. Shafter was taken to Clifton Springs, New York, where he remained some four years. Late in 1872 he was taken to Europe, but was too unwell to enjoy it, and died in Florence, Italy, January 23, 1873. He left surviving him his wife, and five of the eleven children that had been born to him and his wife. The funeral took place from the First Congregational Church in Oakland and his remains interred at Mountain View Cemetery in Oakland. A fine marble shaft marks the spot.

Shafter's estate inventoried at more than \$600,000. Upwards of \$100,000 of this was in fine securities. The ranch property in Marin County had been divided, with Shafter's share running many thousands of acres. At the time of his death he was running over 1500 head of cattle on it.

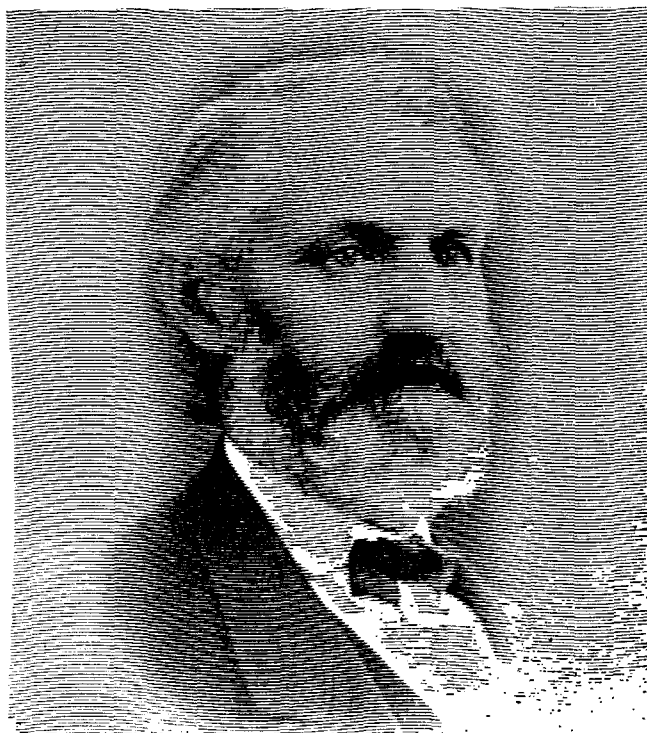
Physically Shafter was a good-sized man, stocky and heavy set, weighing about two hundred pounds. He lacked an inch of being six feet tall. His eyes were blue, his hair fair, his skin was sensitive and sunburned easily. Apparently he wore no beard when he first came to California. He wore a full beard the greater part of his life in California. He was spoken of as the "Round-headed" Shafter to distinguish him from his brother Jim, who was referred to as the "Long-headed" Shafter.⁵ He said he could do his work better when chewing tobacco. As relates to liquor he was a teetotaler.

One readily gathers from the abundance of authentic material available what a robust, solid, and at the same time free and untrammelled spirit Shafter was.

FOOTNOTES

1. Designated the twentieth man to come to the Court to make the chronology regular.
2. *Life Diary and Letters of Oscar Lovell Shafter*, by his daughter, Emma Shafter-Howard (1915), p. 250.
3. *Ibid.*, pp. 205-206.
4. *Ibid.*, p. 15.
5. *Ibid.*, p. 8.

THE CALIFORNIA JUSTICES



Royal Tyler Sprague

by HON. RICHARD B. EATON,
Judge, Superior Court, Shasta County

Royal Tyler Sprague was born in New Haven, Addison County, Vermont, on January 23, 1814.² He was the second son of Roger Tyrrel Sprague, who died when his son was ten years old. A grandfather, Gideon Sprague, had fought in the Revolution and a remote ancestor, Richard Warren, came to America on the *Mayflower*.

Sprague's early education is unknown. At the age of twenty-one, he was teaching elementary school at Potsdam, New York, and later attended the Academy there. The next year, 1836, he went by wagon and stage to Zanesville, Muskingum County, Ohio, where he opened and successfully conducted a private school. In 1838, he began the study of law in the office of Willis Buell, prosecuting attorney of Muskingum County; and in the next year was appointed notary public. He also became a second lieutenant in the Ohio militia and assistant postmaster of Zanesville. It is not known locally when or how he was admitted to the Ohio Bar. After admission he was associated in practice with Judge William Blocksom, whose

daughter, Frances, he married in 1844. Two children were born to the Spragues in Ohio.

Prior to 1848, Sprague had moved to McConnellsville, Ohio. On March 19, 1849, he set out for California, leaving his family at Zanesville. On October 14, 1849, he arrived at Reading's Springs (now Shasta in Shasta County), California. His trip was made on horseback and by the overland route, in company with the wagon train of Major Love and later the McGee party. Indians were not dangerous, but the long trail, bad weather, and poor food made the trip a great physical strain; and Sprague picked up an ague and fever which lasted for months.

Following his arrival in California, Sprague mined near Shasta, and thereafter, in partnership with A. J. Thompson, opened in that town a forwarding and commission business. Almost immediately, however, his legal talents were called into use, and by 1851 he was so busy in practice and civic affairs that his interest in the business was sold.

In February, 1850, Sprague took part in an abortive attempt to set up a local government in "The Springs" (later Shasta). In May, 1850, pursuant to



Another picture of Sprague

ROYAL T. SPRAGUE

Twenty-First Justice, January, 1868-January, 1872

Eleventh Chief Justice, January, 1872-February 24, 1872¹

Mexican law, an alcalde for the town was elected in the person of Benjamin Shurtleff. This distinguished pioneer, a signer of the Constitution of 1879, was the father of Charles A. Shurtleff, later associate justice of the Supreme Court of California. Two weeks later Sprague appeared as prosecuting attorney in Shurtleff's court against one Bowles. Bowles was acquitted of murder, there being "no evidence against him except the fact that he was sleeping by the side of Carmack under the same blankets at the time Carmack was murdered and knew nothing of the matter."³ Evidently a sound sleeper.

On the lighter side, Sprague helped to celebrate the Glorious Fourth of 1850:

I partook of a dinner prepared for the occasion by Mr. Johnson and family. The company consisted of about 50 men. We had numerous short speeches. Declaration [of Independence] read. Disposed of a goodly lot of wine and had a merry, joyous time. Bill \$5.00.⁴

In September, 1850, Sprague was chairman of another committee to organize a township, and after adoption of his report, two justices of the peace were elected. This antedated by five months the organization of county government in Shasta County. In the meantime, however, Sprague had tried several civil and criminal cases before the alcalde and the justices of the peace. In the spring of 1851, after organization of the county and of judicial districts, Sprague was admitted to the district court bar, and in September, 1852, was admitted to the bar of the Supreme Court of California.

His practice had grown steadily and he was on one side or the other of almost every case in the county. Most cases he won; and in the fall term of 1851 he lost none at all. Unfavorable judicial decisions, however, were not the only hazards he had to face. His skill and courage in the face of a proposed lynching best appears in his own account:

This a.m. was employed to defend a Polander by the name of K. Comy [Sp?] who was arrested for Petit Larceny. Obtained a continuance under recognizance of 500 dollars until tomorrow 9 a.m. This evening I learned that a meeting of the citizens had been called and was in session at the St. Charles Hotel for the purpose of executing summary punishment upon the Polander. I immediately repaired to the meeting and found among the leaders of this outrageous proceeding Messrs. Weber, Walsh and others of our most prominent citizens. The accused was arraigned and a jury was being called to go through the mock trial. At this juncture Mr. Weber seeing me and anticipating opposition to his proceeding took pains to come up to me and inform me that the prisoner desired to see me, but in a very abrupt manner told me

that I could not speak in that court. I replied in as caustic a manner as he could that I had not asked to speak nor had I asked him to come and insult me but that I could and should speak in another court, and that he and his confederates should answer. After the jury had been called and sworn Weber moved that no one be allowed to speak for the prisoner. This motion was immediately seconded and Weber sustained it in a violent and excited speech. I opposed the motion with all the zeal and determination in my power and reviewed the course of Weber and others with all the boldness and severity in my power. Weber replied to me with bitterness but he was too late. The popular current had changed, the motion was lost and a motion to adjourn sine die was carried with only two dissenting voices. The Polander moved off to his store unmolested and the meeting quietly dispersed.⁵

In addition to his legal practice, Sprague was active in civic affairs. He made recommendations to the court of sessions as to sites for public buildings and roads; and in 1853 was chairman of the public meeting which, after the great fire of that year, laid out Main Street of Shasta 100 feet wide.

In 1852 Sprague returned to Ohio, and brought his family to Shasta by way of the Isthmus of Panama. In Shasta he built a two-story house, which stood until about twenty years ago. The family resided in the house until 1867. The house was widely known for its hospitality and as a gathering place for the young people of the community. Two daughters were born to Mr. and Mrs. Sprague in Shasta, and one of them, who died in infancy, is buried there.

Sprague was a charter member of Shasta Lodge I.O.O.F., organized in 1856, and was later Noble Grand. He was a member of the Society of California Pioneers and a trustee of the Union church of Shasta.

Sprague was described as a large man, dignified in manner, courteous in address, and of rigid integrity in an age which both weighed and valued that trait. Dr. Shurtleff referred to him as:

A strong, positive, conscientious man who discharged the duties of the exalted public offices he held with signal ability, and always without fear or favor. He was a good neighbor and a kind, affable man in his family.⁶

In politics Sprague was a Northern or Broderick Democrat—later, during the Civil War, a Union Democrat. In 1850, Sprague was, rather against his wishes, a candidate for the office of county judge of Shasta County, but was defeated. In 1851 and 1853 he was elected to the state Senate and served in the third, fourth, fifth, and sixth Legislatures. In the latter session he was president pro tem. of the Senate. The Legislature then met annually. In 1853 Sprague proposed constitutional amendments, later adopted,

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which provided for the present system of biennial regular sessions, senatorial terms of four years, and staggered elections to the Senate. During his legislative terms Sprague served as chairman of the committees on public buildings and the judiciary. He introduced a bill providing homestead exemptions and opposed a fugitive slave act. The improvement of transportation, particularly in northern California, received his repeated attention.

In 1859 and 1863 Sprague was an unsuccessful candidate for the office of justice of the Supreme Court; but in 1867 he was elected to that bench for a ten-year term.

In his four years as associate justice (1868-1871, inclusive) Judge Sprague wrote 105 opinions for the Court or a majority of it, two specially concurring opinions, and nine dissenting opinions. In addition, he seven times concurred specially and four times dissented without opinions prepared by him. These opinions are to be found in volumes 34 to 42 of California Reports. The opinions cover a wide variety of legal subjects. They are more distinguished by good sense in plain language than by quotable epigram. The following definition, however, is noteworthy:

By this writ [of mandate] directed to a person who acts in a judicial or deliberative capacity, he may be ordered to proceed to do his duty, by acting or deciding according to the best of his judgment; but he cannot be directed in what manner to act or decide in the premises.⁷

Judge Sprague believed in the strict or near-literal construction of written instruments, whether statutes, agreements, or pleadings.

If the law is harsh, and in its practical application in some instances may seem to be used as an instrument of oppression or injustice, a means of escape from or modification of its rigors should be sought at the hands of the legislature.⁸

Arguments based on the convenience of the parties did not weigh with him, as against legal rights.

It is the duty of the Courts to protect a citizen in the enjoyment of his private property, not to license a trespass upon such property; nor to compel the owner to exchange the same for other property to answer private purposes and necessities.⁹

In the case of first impression in California, Judge Sprague laid down the existing rule that a criminal defendant, save for very special cause, cannot be brought into court in chains.¹⁰ One of his cases, holding collectible a negotiable instrument given in a

gambling house, but not over the gambling table, is still cited.¹¹ Few, if any, of Judge Sprague's opinions, however, appear in casebooks prepared for the education of law students.

On January 1, 1872, as the senior justice, Judge Sprague became Chief Justice of California, and continued in that office until his death. His health had been failing for some time. During the January term of 1871 he had been often absent; and in the January term of 1872, though able to preside at the memorial service for former Governor Bigler on January 8, he took no part in most cases decided and wrote no opinions.

On February 24, 1872, Chief Justice Sprague, then aged fifty-eight, died at Sacramento of a rheumatic heart condition thought to have arisen from the hardships of his trip across the plains. Both houses of the state Legislature adjourned in his honor; and his funeral was held at the state Capitol, with the chaplain of the Senate presiding. He is buried in the state plot of the Sacramento City Cemetery.

Judge Sprague was survived by his widow and three children. The youngest daughter, Frances Royal Sprague, M.D., of Pennsylvania, died in 1957. Grandchildren resided in Shasta County until 1956. The writer is greatly indebted to the late Mrs. Anna Sprague Rose of Redding, a granddaughter, for material, and for the picture of Judge Sprague used with this article. The present heir is a great granddaughter, Mrs. Earl Luby of New York, whose husband is an editor of *The Twentieth Century* television program.

FOOTNOTES

1. Date of death.
2. *Sprague Journals*: "Birthday Book" of Mrs. Sprague; Bible of Sprague's brother. Certain other records give January 22, 1814.
3. *Sprague Journals* (May 21, 1850).
4. *Sprague Journals* (July 4, 1850), quoted by Dr. Shurtleff in *Overland Monthly* (Aug., 1900).
5. *Sprague Journals* (May 9, 1851).
6. Benjamin Shurtleff, M.S.S.
7. *Francisco v. M. T. Company* 36 Cal. 283.
8. *Roussel v. Kelly* 41 Cal. 360.
9. *Gregory v. Nelson* 41 Cal. 278.
10. *People v. Harrington* 42 Cal. 165.
11. *Poorman v. D. O. Mills & Co.* 39 Cal. 345.

JOSEPH BRYANT CROCKETT

Twenty-Second Justice, December, 1867 - January, 1880



Joseph Bryant Crockett

For interesting careers it would be hard to find one that surpasses Joseph Bryant Crockett's. He made an outstanding record in three states, Kentucky, Missouri, and California. The fact that he served two terms in the Kentucky Legislature and one in Missouri before coming to California would be proof sufficient that he was not without experience when he came to this state. These are only a fraction of his accomplishments.

While the major portion of Crockett's mature life was addressed to the jealous mistress, he also made a first place for himself in the field of journalism and for a number of years edited one of the leading newspapers of the country. Though his father was a public man a part of his life Crockett's background was in a high degree that of a farmer boy.

Crockett was a man of firm convictions and a fighter for his principles. In Missouri he favored

rivals of the great Benton and had a hand in keeping this fiery statesman in his place the period he lived there. Although nurtured in the same Kentucky as Lincoln and somewhat resembling him in appearance, he fought him and his supporters when he became President with an earnestness that at times approached vindictiveness. If his great abilities had found expression with the prevailing trends he might well have made a first place for himself in American history. While in high demand in his professional field, he was also public spirited in a high degree, and few men have given more of their time without thought of compensation to deserving and worthy causes.

Personally Crockett was a likeable and engaging man. That he was a family man is attested by the twelve children that blessed his home. There was a period when he was recognized as one of the first lawyers in San Francisco, and his practice one of the most lucrative on the Pacific Coast. As a jurist he was one of the soundest that has served on the Supreme Court of California.

Joseph Bryant Crockett was born at Union Mills, near Nicholasville, Jessamine County, Kentucky, May 17, 1808, and was the son of Robert and Martha Ferguson Crockett.¹ Colonel Joseph Crockett, one of Kentucky's founders, was his grandfather. While Crockett has been spoken of as of Scotch extraction his ancestral background was French as well as Scotch-Irish. Up to the time his forbears took up their residence in Ireland in the seventeenth century the family name was Crocketayne.²

While Crockett was still a youngster his family moved west to Russellville, in Logan County. There a man by the name of Daniel Comfort conducted for many years a classical school which Crockett attended. In the spring of 1827 he entered the University of Tennessee at Nashville, but by reason of the straitened financial circumstances of his father at the time he was compelled to leave Nashville after enjoying the benefit of the university for less than one year.³ Nashville, it may be mentioned in passing, is not a great distance from Russellville. While Crockett was not permitted to complete his formal education, he nevertheless became a very well educated man.

At nineteen Crockett went to Hopkinsville, the county seat of Christian County. There he took up the study of the law in the office of Charles S. More-

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head, later Governor of Kentucky, and was admitted to the bar about 1828. Soon after Crockett's admission he became associated in the practice with Gustavus A. Henry in Hopkinsville, this association continuing about two years, when Mr. Henry moved to Tennessee and Crockett succeeded to the business of the firm. James F. Buckner, who studied his law in Crockett's office, later became his partner.

Crockett married Caroline Matilda Bryan, a daughter of John Bryan of Hopkinsville in 1832.

In 1833 Crockett was elected to the House of Representatives of Kentucky and with James C. Clarke represented Christian County in the session that commenced December 31st. He was appointed a member of the committee on courts of justice. He was elected again in 1836.

Upon leaving the Legislature he became the commonwealth's attorney for the judicial district that included Christian County. He served in this position for a period of about two years. While his career as a prosecutor has been described as "brilliant and able,"⁴ the work of prosecuting was not as congenial to his tastes as representing a defendant. In fact, he was an unusually able defender.

After a successful career of something less than twenty years in Hopkinsville, Crockett moved to St. Louis. St. Louis, it may be observed, really is not far from Hopkinsville. He was not long in establishing himself in the new community. "Crockett and Briggs, attorneys, 36 N. First" is the way he appears in the St. Louis Directory of 1848. This was D. C. Briggs.

Apparently Crockett was attaining financial independence at the time he left Hopkinsville. The tax lists for 1839 show him the owner of 200 acres of land in Christian County, 550 acres in Trigg County on the Tennessee River, and seven and a half acres near Hopkinsville. Along with other personal property the tax lists show him the owner of seven "blacks," valued at \$2,100.⁵

In 1850 Crockett was elected to the General Assembly of the Missouri Legislature to represent St. Louis County. He served through the sixteenth session of the Legislature. From the prominent part he played it is apparent that his experience in Kentucky stood him in good stead in Missouri. He voted with the majority for Nathaniel W. Watkins for speaker, and was appointed one of the committee to inform

him of his election and to escort him to the speaker's chair. On January 9, 1851, the Legislature reached the matter of electing a United States Senator. The leading contenders were Henry S. Geyer and Thomas H. Benton, Crockett voting for Geyer. After forty ballots and twelve days Geyer was elected.

In due course Crockett became editor of the *Daily St. Louis Intelligencer*, where he served until he left Missouri and settled in California. This paper with its large sheets in form was much like the *Alta California* of California's first years. It was widely read even outside of Missouri. Joseph G. Baldwin, mentioning Crockett in a letter from San Francisco to his wife in Alabama, in 1854, referred to him as the author of the "Cala letters that appeared in the *Intelligencer*." Baldwin and his wife had read them in Livingston, Alabama. These California letters were written as Crockett made the trip from St. Louis to San Francisco and were continued for a year or so afterwards.

Crockett did not take his family with him, but took them back to Hopkinsville. Apparently Crockett's future remained uncertain for a period as his family did not join him in California until sometime later. He made several trips back to St. Louis and Kentucky in the meantime.

Crockett's first letter after leaving Missouri appeared in the *Intelligencer* of February 14, 1852, and was written at New Orleans. He mentions briefly his trip down the Mississippi. The following day he boarded the schooner *Bonito* for Vera Cruz, Mexico. The second letter was written at Vera Cruz, as was also the third, and the fourth from Mexico City. From Mexico he went overland to Acapulco. There he found a great many people who had been the victims of a recent shipwreck, and encountered some difficulty in procuring passage to California. A ship happened along, however, an officer of which he knew, and through that managed to get on. He arrived in San Francisco April 1, 1852.⁶

Crockett appeared in the San Francisco directory of 1852 as "Crockett, J. B., atty. at law, 90 Merchant" and "Crockett & Wells, attys at law, 90 Mcht." This was Alexander Wells, according to the directory mentioned, also later a justice of the Supreme Court of California, and a somewhat notorious politician in California's early days. A little later he became associated with his old friend Gwyn Page, with whom he

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Twenty-Second Justice

had studied law in Governor Morehead's office in Hopkinsville. Baldwin thought for a while he might get lined up with them, but this did not work out at first, although he became associated with Crockett some years later. Baldwin estimated that the business handled by Crockett & Page when Baldwin came to San Francisco in 1854 was worth the net of \$60,000 a year.

That Crockett got in on the lucrative Spanish-Mexican grants title settlements is apparent from the fact that he received as a fee 1800 acres of land in Contra Costa County where the community of Crockett, which was named after him, is now located. He employed a friend, Thomas Edwards, whom he had known in St. Louis, to settle upon this holding and operate it. Edwards built the first house, which still stands, and it has now been marked as an historic site.^{6a}

Mr. Page died about 1857, whereupon the firm was reorganized, Crockett, Baldwin, and Alexander P. Crittenden becoming associated.⁷ Here were three unusually able men. Mr. Crittenden was a nephew of John J. Crittenden, the distinguished statesman from Kentucky. Baldwin was unquestionably one of the keenest lawyers that ever practiced in California. Crockett continued to prosper in association with these men. This association continued until Baldwin became a member of the Supreme Court of California in January, 1859. Through the years thereafter Crockett became associated with W. P. C. Whiting, W. W. Wiggins, and Joseph Naphtaly.⁸ Mr. Naphtaly was an able lawyer and had a long, successful career at the bar in San Francisco. His association with Mr. Naphtaly continued until the last of December, 1867, when Crockett was appointed a member of the Supreme Court of California, succeeding Oscar L. Shafter, who had resigned by reason of failing health.

Crockett's name figured prominently at the time of the Vigilante uprising in San Francisco in 1856. That he continued to enjoy the confidence of the Vigilantes would appear from the fact that he was retained by them to represent John L. Durkee in the federal court when he was arrested and charged with piracy for boarding the schooner *Julia* in San Pablo Bay and capturing the guns and war materiel belonging to the state intended for use against the committee of vigilance.⁹

One of the things Crockett actively interested himself in his earlier years in California was wayward

young people. He had an important part in the establishment of the first industrial school for juvenile delinquents in San Francisco. When its building was dedicated in May, 1859, he gave the principal address. His views for treating juvenile offenders would compare favorably with the best views of the present day.¹⁰ It is all the more to Crockett's credit that he took time out for these matters when his professional employments were pressing him in the manner which they were.

His interest in furthering the educational facilities of the community is further attested by the part he took in establishing the Mercantile Library Association in San Francisco. This institution not only supplied good reading matter but sponsored lectures and discussion of an educational nature. Crockett has been spoken of as the father of this association, "having called and presided over the first public meeting assembled for the purpose of establishing that institution."¹¹

When the founding of Hastings College of the Law was announced at the commencement exercises of the University of California at Berkeley in June, 1878, Crockett shared speaking honors with Hastings, the founder, and other distinguished men. He was at that time a justice of the Supreme Court of the state and spoke for the bench of the state.¹²

In politics Crockett started out a Whig. In 1860 he was affiliated with the Union Constitutional Party. By 1864 he had attained considerable prominence in the Democratic Party and was one of the vice presidents of its state convention held at San Francisco that year. This convention nominated him for Congress. Crockett, of course, supported McClellan for President against Lincoln.

It was at this time that he uttered the scathing things he did against Lincoln. After reviewing the critical state to which "passion," "rampant fanaticism," etc., had brought the nation, he stated:

In this trying emergency the eyes of the whole nation were turned to Mr. Lincoln, as the head of the Government. It was hoped that he would evince the qualities of a great statesman; that in so momentous a crisis he would discard from his councils mere partisans and place-hunters and call around him the most discreet, sagacious and patriotic advisors; that he would utterly forget and ignore all party platforms and take his stand on the Constitution alone; that he would endeavor, by every possible method, to harmonize the discordant elements, and, above all that he would appeal to the conservative masses, both at the North and the South, for their support, and turn his back upon the pestilent Abolition agitators who had so large a share in producing the war.

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These hopes were not fulfilled. On the contrary he proved to be weak and vacillating in his policy, obscure and confused in his plans, narrow in intellect, and otherwise utterly deficient in the qualities of even a second-rate statesman. But worse than all this, he was still only the leader of a party, and not the Chief Magistrate of a great nation, struggling for its life. He thought more of the Chicago platform than the Constitution, and less of the liberty of the citizen than of a triumph over his political opponents. He placed himself completely in the hands of the worst elements of the Abolition party, who moulded his views and dictated his policy....¹³

He further referred to Lincoln as "the flagrant violator of the Constitution."

Crockett was defeated by D. C. McRuer, running on the Union Party ticket.

When Shafter resigned from the Supreme Court of California December 31, 1867, Crockett's good friend, Henry H. Haight, then the Governor, appointed him to fill the vacancy. While Shafter was an Abolitionist, he and Crockett nevertheless were the best of friends. He became the Democratic candidate to succeed himself in the election of 1869 and was elected.

When a judge writes opinions that are good enough for legal scholars after the order of James Barr Ames, Jeremiah Smith, Samuel Williston, Edward H. Warren, George P. Costigan, etc., to select as sound expositions of the law it may be certain he has shown qualities of a first class jurist. Crockett's opinions find representation in casebooks prepared by these men and many others. *Arques v. Wasson* 51 Cal. 620, is a leading case of the entire United States on the point it decides, namely, that a mortgage lien given by an owner of the land upon crops to be planted at a future time is valid and binding upon the crop coming into existence. This case connects modern law with ancient English common law.

Crockett was seventy-three when he retired from the Court. Failing eyesight for years had rendered his labors especially arduous. As far back as March, 1871, writing to Oscar L. Shafter, he said in part:

About three years ago, one of my eyes began to fail, and in about a year I lost the sight of it entirely. About one year ago, the other began to fail in the same way, and is still gradually growing worse, so that now I get about with difficulty, and am unable to read print, though, as you perceive, I can still write, after a fashion. . . . In the meantime you can imagine the difficulty I experience in the performance of my official duties. My wife and daughter have to read everything to me, and generally do the writing at my dictation. Justice is said to be blind, but I have found out that it is a very bad thing, for a justice to be blind.¹⁴

Notwithstanding this trying handicap Crockett kept up his end of the heavy court load.

Crockett did not go into complete retirement, but after a period opened an office and practiced a short time prior to his death.

Crockett died at his home in Fruitvale, now a part of Oakland, January 15, 1884, aged seventy-five. He left surviving him his wife and seven of his twelve children. He left only a moderately sized estate, mostly land, in east Oakland, so far as the probate records show.

In his older days, with his old-fashioned glasses, big Roman nose, and white hair and chin beard, Crockett might have been thought of as the personification of wisdom. Sawyer spoke of "The severe and dignified gravity, which sits so gracefully on my friend here," referring to Crockett while giving a St. Patrick's Day after-dinner speech on one occasion.¹⁵ He mentioned how people not acquainted with Crockett took him for a cleric.

That Crockett was a man of more than usual ability and resourcefulness is fully borne out by the record he made. As is generally the case where a person wins a first place he was a consistent and indefatigable worker all his life. Any one of the careers he worked out for himself in Kentucky, Missouri, or California would be sufficient to entitle him to permanent and lasting remembrance.

FOOTNOTES

1. *The Filson Club Publications*, XXIV (1909), p. 63.
2. *Ibid.*, p. 2.
3. William Henry Perrin, *The County of Christian, Kentucky* (F. A. Battey Pub. Co., Chicago and Louisville, 1884), p. 90.
4. *Ibid.*
5. Tax list in the Kentucky State Historical Society Library, Frankfort, Kentucky.
6. *St. Louis Intelligencer* (May 14, 1852).
- 6a. Knave, *Oakland Tribune* (Oct. 23, 1960), col. 1.
7. Lloyd Tevis is reported to have been associated with Crockett in his practice about this time. (*Filson Club Publication*, op. cit.)
8. *The Sacramento Union* (Jan. 17, 1884) mentions that Congressman William A. Piper was at one time associated with Crockett in the practice.
9. Bancroft's Works, Vol. XXXVII, *Popular Tribunals*, Vol. II, pp. 375, 504.
10. *Sacramento Union* (May 19, 1859).
11. *Sacramento Union* (Jan. 17, 1884).
12. Address of S. C. Hastings, founder of Hastings Law Department of the University of California, before the Regents, President and Faculty and responses of T. B. Bishop, for the Regents, and Hon. J. B. Crockett, one of the judges of the Supreme Court.—Edward Bosqui & Co., S. F., 1878.
13. *Daily Alta California* (Oct. 28, 1864), 2.
14. *Life Diary and Letters of Oscar Lovell Shafter*, pp. 230-231.
15. *Daily Evening Post* (S. F.) (March 25, 1882).

WILLIAM T. WALLACE

Twenty-Third Justice, December 10, 1869¹-February 27, 1872

Twelfth Chief Justice, February 27, 1872-November 10, 1879²



William Thompson Wallace

renown, but rather as a judge of the Superior Court in San Francisco after he left the Supreme Court. Like some other Kentuckians he was a fighter. He did not lack in boldness. Perhaps this quality might have served him better in some other branch of the government than in the judicial. Of all the men who have been the justices of the Supreme Court possibly only Terry and Field impressed their personality and character more forcefully upon the general population of their day. This is saying a great deal. With them he shares the interest which always comes in playing a leading part in a cause celebre. With his luck taking a little different turn he might well have become a United States Senator or even a justice of the Supreme Court of the United States, and perhaps he came nearer to winning these posts than many people realize.

William Thompson Wallace was born in Mount Sterling, Kentucky, March 22, 1828. He apparently received both his general and legal education in Kentucky. About the only detail that has survived oblivion as relates to his school days is the one that he ran away from school to become a soldier in the Mexican War. He came to California by way of the Isthmus in the fall of 1850, aged twenty-two, passing San Francisco by and settling in San Jose, where he immediately entered the practice. In 1851 he served as district attorney for the third judicial district for a short period. This same year he became associated in the practice with C. T. Ryland, who married Peter H. Burnett's daughter, Martha L., about this time. Upon Governor Burnett leaving his office, he joined Ryland and Wallace in the practice, but withdrew soon afterward. Wallace married Burnett's daughter, Rometta, at the Burnett home in Alviso in 1853.

Wallace was mentioned for Congress in the Democratic convention of 1854. The next year he became the Know Nothing Party's candidate for Attorney General of California and elected, serving in this position the next two years. Upon his term expiring he returned to San Jose and resumed the practice there. He was a candidate of the Breckenridge Democrats for justice of the Supreme Court in 1861 but unsuccessful. He was the candidate for this position two years later and again defeated.

In 1863 he became associated in the practice with William T. Patterson and William W. Stowe in San Francisco.

William T. Wallace's life was the expression of a strong and forceful personality. While his achievements were far from modest, they were nevertheless not up to his ambitions. District Attorney, Attorney-General, justice of the Supreme Court of California—eight years of which he was the Chief Justice, regent of the University of California, presidential elector, member of the Legislature, judge of the superior court, and police commissioner, would ordinarily constitute a list of accomplishments sufficient for any man. Wallace would have done far more. Considering the lengths to which he exerted himself all through the years and apparent indifference to the defeats that were his as he was making his record, it is evident that he was possessed of more than usual persistence. It was not as Chief Justice that he won his greatest

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Wallace's name was presented for a justice of the Supreme Court in the Democratic convention in 1865, but he did not receive the nomination. His name was presented for the position again in 1867 but this year the nomination went to Royal T. Sprague. Wallace's name was presented in the Democratic convention of 1868 for Presidential elector but he again met defeat.³

The tide turned in Wallace's favor in 1869 when he was nominated by the Democrats for a justice of the Supreme Court of California and elected over the incumbent Chief Justice Lorenzo Sawyer. The election was close, however, Wallace receiving less than three hundred votes over Sawyer.

While Wallace's road to the Supreme Court had been a hard one, he nevertheless did not regard this honor as a final goal. He exerted himself for the office of United States Senator and figured prominently in the Legislature for this position in 1872 and again in 1879. To serve in this position was not a privilege to be his, however.

In 1875, while serving as a justice of the Supreme Court, he was appointed a regent of the University of California and served in this capacity until 1902. He is reported to have drafted for Hastings the statute creating Hastings College of the Law.

After serving two years as an associate justice, Wallace became the Chief Justice, serving in this position until the end of his term in 1879, when a new court of seven justices came in under the Constitution of 1879. A number of Wallace's opinions have found their way into the standard casebooks of the law schools of the country.

Upon leaving the court Wallace again took up the practice in San Francisco, becoming associated with Clarence R. Greathouse and Gordon Blanding.

Perhaps the most prominent feature of Wallace's life after leaving the Supreme Court was his continued participation in politics. He took an active part in the presidential campaign of 1880, lining up with the faction that opposed Field in his ambitions for the Presidency. Field disliked Wallace thoroughly, characterized him as "a man utterly without principle," and spoke of the "bad eminence" he had

attained in California by reason of "his extreme Communistic views."⁴ If the term "communistic" was to be understood as descriptive of a point of view greatly at variance with that entertained by Field on matters political and economic, Wallace would no doubt not have taken much exception to Field's use of this term as regards him. Certainly Wallace did not subscribe to Field's school of thought. In 1882 Wallace was elected to the Assembly and served through California's twenty-fifth Legislature.

Wallace was holding no public office save that of regent of the University of California when Cleveland was elected President the first time in 1884. In this election his good friend Barclay Henley was elected a Congressman from San Francisco. Soon after Cleveland's inauguration Wallace went to Washington, D. C., where he and Henley worked closely together on political matters. Wallace became acquainted with Cleveland, the members of his cabinet, and a number of leading Democrats from all over the country. Henley states he made a very favorable impression on these leaders. "I betray no confidence at this day in view of my knowledge of the facts," he wrote in 1910, "that if a vacancy had occurred upon the Supreme Bench of the United States during Cleveland's administration, Judge Wallace would have been appointed."⁵

Wallace was elected a judge of the superior court in San Francisco November 2, 1886, and took his place on the court the following January. He was elected for another six-year term in 1892. He served as presiding judge during the year 1891. It was as presiding judge that he made the most colorful showing of his entire career.

San Francisco and the State of California have through the years suffered their periodic seasons of governmental corruption; 1891 was such a time. There was much scandal this year in connection with the state Legislature and in San Francisco the city affairs were under the domination of Christopher A. Buckley, boss of the Democratic Party. As presiding judge, Wallace concluded to have the whole thing aired by the San Francisco grand jury. He personally took charge and planned his course carefully. While careful as relates to his powers, he nevertheless seems to have resolved any doubts in favor of his powers. Indictments were found against both city and state

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Twenty-Third Justice

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officials. Mr. Buckley himself fled to Canada. Prosecutions and convictions followed. Despite all the furor Wallace stirred up, things went pretty well for him and his clean-up program until trials commenced taking place upon the indictments found. On the appeals the justices of the Supreme Court divided into several groups, with the majority agreeing in overruling Wallace. His grand jury was in the end held illegal and its work without legality.

Wallace did not take these overrulings meekly but in discharging the grand jury gave them a talk that was spoken of as lecturing and reversing the Supreme Court. "Some one has blundered, a mistake has been made in some quarter," he observed. "I will venture to state that it was not here."⁶

Much of the press had been unstinting in its support and praise of Wallace. Some of it did not take the reversal of his rulings any more graciously than he had. Some of the comments even assumed the tone of abuse. "Boodle appears to have triumphed; wrongs innumerable may go unwhipped of Justice, but the forms of technical law must be upheld; truth may be overshadowed and crushed, but falsehood shall have her transient victory if only she parade in the garb of fossilized precedent."⁷ It seems almost impudence," wrote Ambrose Bierce in the *San Francisco Examiner*, "to hold that Judge Wallace's tremendous arraignment of the Hen Roost might have been made stronger, but in my layman's presumption I think it might have been. My notion, in illegal phraseology, is this: The Hens, for reasons of their own, unknown to the laws, decided that before appointing an elisor to select a part of the grand jury, Wallace was bound to have an affidavit setting forth the disqualification of the sheriff and the coroner to make the selection themselves. Judge Wallace answers in effect: 'The disqualifications of those officers being within the knowledge of the court, an affidavit was needless, and the law requires nothing needless.' After pursuing this phase of the matter at some length, he continued: 'Doubtless Judge Wallace could have presented all this more lucidly than I have the skill to do; but even as I have set it down it ought to be within the comprehension of their Henships of the Supreme Perch. I have tried, indeed, to adapt it to the meanest capacity, and I am not without hope that it will be intelligible to even old Chickabiddy McFarland herself.'⁸ This is interesting considering how time has vindicated McFar-

land as one of the soundest judges who has served on the Court. It further illustrates how untrustworthy popular impatience can often be.

As Wallace's year as presiding judge was coming to an end, civic-minded leaders got up a mass meeting presided over by James D. Phelan, to encourage the judges of San Francisco to make Wallace the presiding judge for another year to enable him to complete his work of reform. Considering the standing of the men who addressed this meeting it is almost difficult to understand how the judges could have disregarded the resolutions that were passed. The judges, however, were unanimous, except for a single vote, in disregarding this sentiment and James M. Trout was elected the presiding judge for the following year. Charles W. Slack, one of the judges at this time, explained to the press why he had voted for Trout. "There must be a final decision somewhere and the Constitution and Laws of California have assigned the finality to the decision of the Supreme Court. If the law has any meaning it must reach the Superior Judges as well as everybody else, and it is not only a piece of impertinence but a violation of his oath of office for a judge of an inferior court to attempt to overrule the Supreme Court."⁹

It is too bad space permits of no more than the briefest allusion to Wallace's work with the grand jury. The general excitement it aroused, not only on the part of the general public, but with the press, the first lawyers of the state, and the judges of both the lower and upper courts, constitutes an interesting and instructive chapter, indeed.¹⁰

Brunner v. Superior Court 92 Cal. 239, one of the cases overruling Wallace, is commonly regarded as overruling *People v. Southwell* 46 Cal. 142, upon which Wallace had relied in planning his course and a decision in which he had participated as a member of the Supreme Court.

While Wallace was legally overruled on technical grounds what he did was nevertheless effective in putting governmental corruption in California to flight.

James D. Phelan as Mayor of San Francisco later appointed Wallace police commissioner of San Francisco.

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Wallace was a massive man, six feet two inches tall. By temperament he was calm and deliberate. Boldness was one of his outstanding qualities. Perhaps his favorite public characters were Daniel Webster and the great Jeremiah S. Black. Was it Einstein who said there is no greater teacher than concrete personal example?

Wallace retired pretty much from public life upon his term as regent of the university expiring in 1902. In 1905 he suffered a stroke, greatly curtailing his activities. He died August 11, 1909, in San Francisco and his remains were interred at the Catholic Cemetery in Santa Clara. He left surviving him his wife and four of his children. He left a considerable estate, much of which was real estate in San Francisco. Shuck spoke of him as a millionaire.¹¹

FOOTNOTES

1. Date commissioned according to records in office of Secretary of State.
2. Date of successor's commission.
3. See generally, *Political Conventions in California*, Davis (well indexed).
4. Carl B. Swisher, *Craftsman of the Law*, p. 316.
5. *Green Bag*, Vol. XXII, 385.
6. *S. F. Call* (Dec. 24, 1891), 2, col. 8.
7. *San Jose Phoenix* (Dec. 13, 1891).
8. *S. F. Examiner* (Dec. 27, 1891), 6, col. 5.
9. *S. F. Post* (Jan. 8, 1892).
10. The writer is indebted to Wallace Sheehan, Esq., the grandson of Wallace, in making the voluminous scrapbook of press clippings available to him.
11. Shuck, *History of the Bench and Bar* (1901), p. 405.

JACKSON TEMPLE

*Twenty-Fourth Justice, January 8, 1870-January 1, 1872;
December 13, 1886-June 25, 1889; January, 1895-December 25, 1902*



Jackson Temple

Jackson Temple was born in Heath, Massachusetts, August 11, 1827, and was the seventh of David and Rosamond Nims Temple's nine children. From the fact that he was born in Heath he occasionally mentioned that he was a Heathen. He is the only man of Massachusetts birth to come to the Court. While his progenitors were not among the original settlers of Heath they nevertheless came there at an early date and from time to time represented a fair share of the gifts and talents of the community. There were among them doctors, lawyers, clergymen, etc. Sometimes the majority of the town board were Temples. Temple's father served in this capacity. The Temples originally came from England, where they are of ancient lineage. Many Temples have attained prominence there. The first Temple in America was Abraham Temple, who arrived in 1636 and settled in Salem, Massachusetts.¹

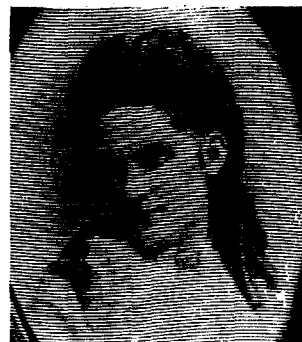
After receiving a common school education Temple entered Williams College at Williamstown, Massa-

chusetts, from which he graduated in 1851. Mark Hopkins was the president at the time. Among Temple's papers at the time of his death was a copy with Temple's name written thereon of the bacca-laureate sermon, "Strength and Beauty," which Mark Hopkins delivered at the time of Temple's graduation.

Upon leaving college Temple is reported to have gone to Newark, New Jersey, and commenced the study of the law in the office of a Judge Whitehead. After a period he went to Freehold, in Monmouth County, and took charge of a Latin and grammar class, remaining there something like a year. He thereupon entered the law department of Yale University, graduating in 1853. To help defray expenses he did some teaching while studying law. "I fiddled," he observed to his children years later, referring to the other students at this time, "while they danced."

Soon after leaving the law school Temple came by way of the Isthmus to California, arriving in San Francisco April 15, 1853.

He is reported to have remained in San Francisco for the period of about six months upon first arriving. He then joined his brothers, David and Brougham, who had preceded him to California, in their ranching operations at Cotati, near Petaluma. Sometime before Temple left the East these brothers' shares of their father's estate or notice of distribution to them had been sent to them, but they had not taken the letters containing the legacies or notices out of the post office by reason of not having the dollar required to pay the postage due. Temple's coming must have been a happy occasion for them in more ways than one.



Christie Hood Temple



Temple when young

THE CALIFORNIA JUSTICES

After about a year of ranching Temple took up the practice in Petaluma, then the county seat of Sonoma County. When the county seat was changed to Santa Rosa a short time later he moved there. This became his home the rest of his life, although he was away from there considerable periods at different times. While he did not reap the great rewards in Spanish and Mexican grants litigation that some of the earlier justices like Hastings, Currey, and Heydenfeldt did, he got in on enough of it to give him a good start on a financial competency. He did not care for criminal practice but was not able to escape it entirely. He seems to have practiced pretty much in association with others. Soon after he went to Santa Rosa he became associated with William Ross. Later he became associated with Charles P. Wilkins, whom Oscar T. Shuck characterized as "the most brilliant man who has ever belonged to the Sonoma bar."² Later he was associated with A. Thomas.

In April, 1859, on motion of John Currey, Temple was admitted as an attorney and counselor by the Supreme Court of California. From this it may be gathered he practiced for a number of years under only such licenses as the district courts granted.

Temple was the Democratic candidate for Congress from the third congressional district (California had only three congressional districts at this time) in 1864, but was defeated by pioneer John Bidwell. He was active in politics through the years and from time to time held a number of positions of responsibility in the Democratic Party. He was greatly opposed to Lincoln.

Temple married Christie Hood in 1870. She was a niece of William Hood, one-time owner of the Mexican grant known as Los Guilucos Rancho. What later became Jack London's home in the Valley of the Moon is reported to have been part of this property. Hood Mountain near Santa Rosa was named after William Hood. Christie Hood was born in New Zealand and was living with her uncle when Temple met her. There were born to them seven children. Temple was proud of his large family.

When Henry H. Haight became active in connection with his gubernatorial aspirations in 1867 he persuaded Temple to come to San Francisco and take over his law office. In January, 1870, Haight appointed Temple a justice of the Supreme Court of California to fill the vacancy occasioned by the resig-

nation of Sanderson. Rhodes was the Chief Justice at this time. Temple became the Democratic candidate to succeed himself in October, 1871, but was defeated by Addison C. Niles, running on the Republican ticket.

Temple and Haight left office simultaneously, whereupon they joined forces in the practice in San Francisco. The firm was known as Haight, Temple & Sawyer, the third member being Charles H. Sawyer. Temple's family continuing to reside in Santa Rosa, it was his practice to go there about every week end while he practiced in San Francisco.

In 1873 Temple, Field, and John W. Dwinelle were appointed commissioners to examine and report on the laws of California with particular attention to the codes of 1872.

Temple remained in San Francisco until about 1874, when he again resumed the practice in Santa Rosa. In 1876 he was appointed judge of the twenty-second judicial district comprising the counties of Marin, Sonoma, and Mendocino. He attained considerable fame as a trial judge and some of the big cases of the state came before him, among which may be mentioned the Debris cases in Yuba County and *David D. Colton Estate v. Stanford* 82 Cal. 351. He also participated in some of the cases involving Senator Sharon and Sarah Althea Hill. After two years he was elected to succeed himself for a six-year term, and served in this capacity until the superior courts came into existence under the Constitution of 1879, when he was elected a judge of the superior court for Sonoma County.

Temple often rode horseback from one county seat to another in his district. In doing so he generally carried a fine revolver which is still in the possession of his family. He told his children that he sometimes passed through areas where the wild oats grew so high that he could take a handful from each side of his horse and tie a knot over his head with them while still sitting on his horse. Let the reader himself decide whether he was reciting facts or having a good time with the youngsters. The country still abounded in game and wild life.

Temple's name was placed in nomination for a justice of the Supreme Court by the Democratic convention of 1882, but he failed to receive the nomination. However, the Prohibition Party nominated him and in the election that followed he received only

JACKSON TEMPLE

Twenty-Fourth Justice

2,402 votes, while Sharpstein and Ross, the winners, received respectively 88,527 and 89,363 votes, emphasizing how important party backing is, regardless of how able a man may be, in running for office.

Temple was nominated for a justice of the Supreme Court by the Democrats, Grangers, and American Party in 1886 to take the place of Ross, and elected. He led the Democratic ticket, receiving considerably more votes than Washington Bartlett, who was elected Governor. Many matters were agitating the electorate at this time, among them the Chinese question, taxation, tariff, public ownership of railroads, telegraphs, etc., alien land ownership, money and banking, government loans direct to the people at low rates of interest, recognition of labor, etc. Temple was closely questioned on these matters, including his stand on the matter of home rule for the Irish.

After about three years, Temple resigned from the Court by reason of poor health. He was very conscientious and refused to accept compensation when he could not do his work on the Court. Upon recovering his health Temple again took up the practice in Santa Rosa, becoming associated successively with Melvin Johnson, Thomas Rutledge, and Judge John G. Pressley. He did not practice long, however, as in 1891 he was appointed a Supreme Court commissioner to assist the Court in its work.

In 1894 Temple became one of the Democratic candidates for a justice of the Supreme Court and in the election that followed became a member of the Court for the third time, serving until the time of his death in 1902. From the time he first came to the Court until the time of his death covered a period of more than thirty years.

Temple wrote an excellent quality of opinions. A goodly representation thereof may be found in casebooks prepared by Edward H. Warren, Wambaugh, Beale, Costigan, Sayre, as well as other casebook compilers.

While attending the University of California Temple's son Thurlow (named after the great English chancellor) was waiting on one occasion outside of the Supreme Court chambers to see his father. Justice Henshaw coming out of Temple's office, seeing Temple's son, stopped to chat a moment or two with him. Among other things he said, "Do you know why your father does not write more opinions than he does? Well, I'll tell you. It is because so much of his time is taken up helping the other judges write theirs." While this may have been said more or less in fun, it nevertheless brings out an outstanding quality in Temple. As a practicing lawyer other lawyers consulted him frequently on their hard ones. Nor did they entirely stop the practice when he ascended the bench. Justices of the peace were among those who asked his help.

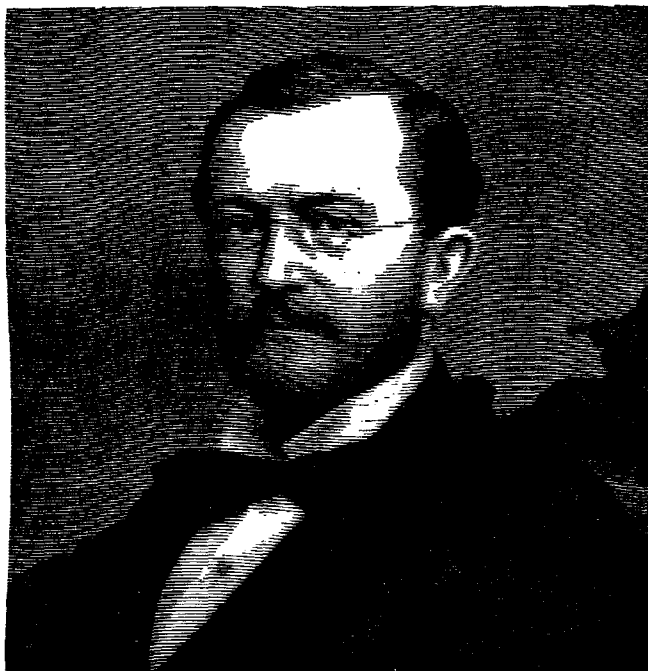
Temple died in San Francisco December 25, 1902. His wife lay critically ill at Santa Rosa at that time, dying a few months later. His funeral services were held in the Episcopal Church in Santa Rosa and his remains interred at the Municipal Cemetery. Apparently Temple never affiliated with any church or fraternal organization. He left surviving him his wife and seven children. He left an estate of something over a hundred thousand dollars, which included his large house located where the California Theatre was later built.

Temple was a good-sized man, being about six feet tall and weighing about 175 pounds. His eyes were blue and when younger his hair was brown. While not without a fine sense of humor he impressed many his last years as austere and serious-minded in a high degree.

FOOTNOTES

1. Norbury Mackenzie, *Colonial Families of the United States of America*, Vol. IV, p. 508.
2. *History of the Bench and Bar in California*, p. 660.

THE CALIFORNIA JUSTICES



Addison C. Niles

Addison Cook Niles was born in Rensselaerville, New York, July 22, 1832,³ and was the son of John and Polly (Cook) Niles. His mother was a descendant of Richard Winslow, one of the Plymouth Colony Pilgrims. His father was a lawyer and a man of prominence and influence in the little community where they lived.⁴

Niles grew up in Rensselaerville, and received his elementary education in Rensselaerville Academy, established by the Presbyterian church in 1843. The academy later became part of the public school system of New York. After his graduation from the academy, Niles taught in a select school at Cairo, New York, one year. He entered Williams College in Williamstown, Massachusetts, in 1850, becoming a member of the junior class upon entering. He graduated in 1852. Upon his graduation he studied law in his father's office in Rensselaerville; later in the offices of Increase Sumner at Great Barrington, Massachusetts, and Rufus H. King, Catskill, New York.⁵ He was admitted to the bar in New York, but it does not appear he did any practicing there. Rufus H. King was a Congressman from New York one term.

Niles came to California the latter part of 1854 or early part of 1855, going directly to Nevada City,

where he at first stayed with his sister Mary Corinthia and her husband Niles Searls. Searls had come to California in 1849, but had gone east early in 1853 and married, returning the same year with his bride. Niles and Searls were also cousins.

Niles married Elizabeth Caldwell after coming to California. She had come here with her brother from Newburyport, Massachusetts. Their only child, Addison Perkins Niles, was born in Nevada City in 1861. He married Isabelle Morrison of San Francisco in 1896, and was a commercial artist. He died in New York City in 1923, without issue, and his remains interred at Rensselaerville. After his death his wife returned to San Francisco, where she resided until her death June 18, 1954.

Niles at once took up the practice in Nevada City. Through the years he became associated with a number of very able lawyers. One of these was John R. McConnell, whom Judge Thomas B. McFarland characterized as "one of the most learned lawyers and men" he had known, and who was "in the full career of a large and lucrative practice" when Niles became associated with him.⁶ Another with whom he became associated was Aaron Sargent, later a United States Senator from California. Later still he was associated with Thomas B. McFarland, who, like Niles, later became a justice of the Supreme Court, and still later with Niles Searls, also later a justice of the Supreme Court of California.

During the winter of 1854-1855, Niles and Thomas B. McFarland got out several issues of the *Nevada Journal*, a weekly newspaper published in Nevada City, while the editor, E. G. Waite, as a state Senator, attended the California Legislature. It was from this work that Niles became known as a newspaperman as well as a lawyer. Niles' fine literary abilities came to the front in connection with this work. Judge McFarland stated he had scarcely ever known anyone "who could put thought into language with such a combination of gracefulness and force."⁷ It may be mentioned that he had shown to advantage in this department while still in college.

As a practicing lawyer Niles was "never very fond of oral argument; and he disliked to go before a jury. But in the presentation of a cause, in the construction of pleadings, and in the preparation of law questions to a court—particularly in the form of written briefs—he had few superiors."⁸

ADDISON C. NILES

Twenty-Fifth Justice, December 20, 1871-January 5, 1880²

One of the highlights of Niles' life was a trip he took in 1856 to the Society and other South Sea Islands. The 1862 report of Niles' class at Williams College referred to this trip and stated he had been "burned out"⁹ shortly before leaving. The report went on to say that he was at that time back in Nevada City carrying on the practice. Niles loved the ocean and on this trip completely disassociated himself with the cares of life and indulged his artistic, poetic and philosophic side as he drifted from island to island as his fancy dictated, some of this finding expression in "literary productions" reported to have been "of a very high order."¹⁰

While Niles participated in politics from the time he first came to California, he nevertheless did not make this department the specialty which a number of the early justices of the Supreme Court of California did. Probably he did no more than follow along while his friends and associates, men like McConnell and Sargent, McFarland and Searls, addressed themselves more actively thereto. That he was not unsuccessful, however, would appear from the fact that he became county judge of Nevada County in 1862, serving in this capacity until he became a member of the Supreme Court in 1872. As a trial judge he won the complete confidence of the community, both of the profession and the citizens. It is said that not in a single instance did any decision which he rendered arouse any personal feelings against him. In the Republican convention which met in Sacramento in July, 1869, he was a member of the committee on resolutions.¹¹

It was in the Republican convention of 1871 that Niles received the Republican nomination for a justice of the Supreme Court. In the election that followed the race narrowed down to one pretty much between him and Jackson Temple, the incumbent, who had been appointed in 1870 to serve in Sander-son's place until the next election of judicial officers. Niles' popularity is well attested by the fact that he beat so able a man as Temple by over 10,000 votes.

Niles served as a justice until the new court of seven justices came in under the Constitution of 1879 in January, 1880. He, therefore, served a period of eight years. Some of his opinions have found their way into the casebooks compiled by legal scholars for use in the study of law. *Feely v. Shirley* 43 Cal. 369, an opinion of three short paragraphs rendered in 1872, appears in James Barr Ames' 1905 (second)

edition casebook on pleadings, 94. *People v. Ah Fat* 48 Cal. 61, appears in Joseph Beale's Cases on Criminal Law (2d ed., 1907), 340, and also in his cases on legal liability (1915), 79. "I have been informed," said Judge McFarland, "that when a member of this court he frequently, during consultations, expressed either orally or in loosely written memoranda, with great fullness and exactness, the substance and form of opinions which afterwards appeared without any sign of his authorship."¹²

Apparently Niles returned to Nevada City upon retiring from the Court. He seems to have come to San Francisco about 1885 or 1886, where he opened a law office.

When Niles first came to San Francisco he assisted Warner W. Cope, a former justice of the Supreme Court, in reporting the decisions of the Court. It is doubtful if he got into practice in any great degree the period he lived in San Francisco.

It is axiomatic that no one may go through life without its ups and downs, and Niles was no exception. Losing heavily his last years by reason of failure of financial institutions, he had to submit to the discomfort one always feels after tasting financial independence and then finding oneself numbered with the poor again.

Niles died in San Francisco January 17, 1890,¹³ leaving surviving him his wife and son. The funeral was under the direction of the Masonic Order in San Francisco, and his remains interred at Laurel Hill Cemetery. They were later removed to Cypress Lawn Cemetery.

Niles was one of the highly impressionable personalities who has served upon the Supreme Court of California. His appreciation of fine things from an early date may be gathered from the fact that he and one or two other students at Williams stretched themselves to go to Boston to hear Jenny Lind on one of her tours to America. The railroad fare alone was \$15. They left Williamstown in the morning and arrived just in time to get a bite and go direct to the theatre, and then hurried back to their lessons.

One of Niles' most prominent traits of character was his modesty. Possibly he was self-effacing to a fault. That his friends felt free to take liberties with him in this regard is borne out by the play one of them made thereon at the time the Zeta Psi College

THE CALIFORNIA JUSTICES

Fraternity, of which Niles was a member, was inaugurated at the University of California, and after Niles had been elected a member of the Supreme Court. At this time it was hinted that an innocent error in a Zeta Psi directory setting Niles out as "Judge of the Supreme Court" at the time he was a county judge of Nevada County had a great deal to do with his ambition to become a member of the Court. The speaker stressed the embarrassment this error had proved to Niles "who, as all intimate acquaintances declare, is a very modest man; sensitive in the extreme to anything like attributed pride or boastfulness . . . as a man less reputed for a retiring disposition might well have been under the circumstances; and it is alleged—falsely, no doubt—that occasionally, when taunted by the brethren, he indulged in several extra-judicial affirmations concerning the Society Register." Continuing, this account, entitled "Zeta Psi Clairvoyance," mixing fact with banter, went on: "Some kindly and fraternally intended attempts to console (?) the Judge proved decided failures. As for instance: There was submitted the suggestion that in the abounding geographical ignorance of the folks of the East, the explanation, if any was called for, would naturally be that he really was a Supreme Judge of the State of Nevada. But no! the idea of being held responsible, by any intelligent person, for some of the remarkable decisions of that Supreme Court, was a worse affliction than the original malady of mistake." Further, it was suggested that "even the country people in the East were not to be imposed upon, since Colton's Missionary Map went out of date, with the statement that California was a county in the Territory of Nevada. . . ." The account stated that Niles "had not been tormented with a reminder of the misprint for six months" prior

to the time he was nominated by his party for a justice of the Court, "and had forgotten about that 'catalogue cipher' until the 'joke' was reversed on him . . ." upon being nominated for the Court. "Now the story is that he sought and obtained the nomination principally on account of the vexatious Zeta Psi publication." "But," concludes the account, "this is a joke which the Judge admits he can stand!"¹⁴

While this is no more than a fun-provoking take-off, results equally striking have been known to flow from incidents as trivial, and illustrates how "personal sensitiveness" sometimes can play an even greater part than "personal ambition."

That Niles was a man of solid parts as well as cast in the mold of finer things is clear from even a brief sketch of his life.

FOOTNOTES

1. Date commissioned according to records in office of Secretary of State.
2. Date new justices under the Constitution of 1879 took office.
3. Records of Williams College according to letter to the writer.
4. The family information was procured from Cornelia N. Gilmour, Rensselaerville, New York.
5. 82 Cal. 661.
6. 82 Cal. 666.
7. *Ibid.*
8. *Ibid.*
9. Letter from Williams College to writer.
10. 82 Cal. 662.
11. Winfield J. Davis, *Political Conventions in California*, p. 293.
12. 82 Cal. 668.
13. Laurel Hill Cemetery records, *S. F. Chronicle* (Jan. 19, 1890).
14. *Alta California* (Oct. 22, 1871), 1.

ISAAC S. BELCHER

Twenty-Sixth Justice, March, 1872-January, 1874



Isaac S. Belcher

Judged by his grasp of the law and ability to state it correctly Isaac S. Belcher may be pointed to as one of the strong judges of the Supreme Court of California. This statement is based in a large degree on the representations his opinions find in casebooks prepared by the first names in law teaching, among whom may be mentioned Jeremiah Smith, James Barr Ames, Joseph Beale, Austin Wakeman Scott, George P. Costigan, Eugene A. Gilmore, Harry A. Bigelow, Edward W. Hinton, etc. Talking to Richard Belcher, Belcher's son, on one occasion, he mentioned to the writer that Bancroft had spoken of Belcher as one of the ten best judges the Supreme Court of California had had. Possibly his rating would not be far below that sixty or seventy years later.

Isaac Sawyer Belcher was born February 27, 1825, and was one of the seven children born to Samuel and Anna Gray (Caldwell) Belcher. Stockbridge, Vermont, is generally regarded as the place of Belcher's birth. The family also lived in Gaysville, where the old Belcher farm was located, and also at Bethel nearby. If Belcher was not born in Stockbridge itself,

it was not far away. Belcher's father had been born in Newburyport, Massachusetts, and gone to Vermont at an early age where he followed the calling of farmer.

Belcher's mother died when he was nine years old. Thereafter his father married Adeline Experience Dunham by whom he had seven more children.

Belcher received his elementary education in the common schools of his boyhood home. At seventeen, he entered the University of Vermont in Burlington, graduating in 1846. The old Belcher family Bible mentions both Belcher and his older brother, William Caldwell, receiving their master's degrees from this institution.

Belcher is reported to have commenced the study of the law in the office of a lawyer by the name of J. W. D. Parker.¹ He interspersed his legal studies with teaching. From 1849 to 1852 he taught in a school of which his brother, William Caldwell, was the principal. He completed his legal studies in 1853,



Adeline Noble Johnson Belcher

THE CALIFORNIA JUSTICES

whereupon he is reported to have been admitted to the bar in Vermont. He went to Chicago for the purpose of investigating the advisability of starting practice there, but soon returned, and a short time thereafter came to California by way of New York City and the Isthmus, arriving in San Francisco June 16, 1853.

Belcher remained in San Francisco only a short time and then went to Oregon where he remained a few weeks, whereupon he returned to California and settled in Yuba County, where he is reported to have engaged for a short time in mining on the Yuba River. He then went to Marysville and became associated in the practice of the law with his brother, William Caldwell. Field and Charles H. Bryan, early day justices, were among his early contemporaries there. While professional labors later took him away from Marysville for extended periods of time, he nevertheless always regarded Marysville as his home.

While Belcher's progress in Marysville was not spectacular it was solid. At the time he was appointed a justice of the Supreme Court twenty years later the press observed that his name had not been as familiar as those of many less talented, for the reason that he had "devoted himself to his profession with a perseverance almost ascetic."² There may be a clue here as relates to the good record he was later to make on the Supreme Court. It should be mentioned that while Belcher was a close student of the law, a glance at Davis' *Political Conventions* shows he did not neglect politics, and participated consistently therein through the years. He came to command considerable influence in Republican circles.

Belcher was elected district attorney for Yuba County in 1855. In 1859 he became city attorney for Marysville. In 1861 he married Adeline Noble Johnson, daughter of William Trebby (Treby) and Martha Tappan (Chase) Johnson, at the bride's home in Augusta, Maine, returning to Marysville after his marriage and a visit to his old home in Vermont.

In 1863 Belcher was elected judge of the tenth judicial district court, serving for a period of six years, but was defeated when he ran for re-election in 1869. He thereupon resumed practice. This was shortlived, however, as on March 4, 1872, he was appointed a justice of the Supreme Court of California, filling the vacancy caused by Royal T. Sprague's death. Belcher did not become a candidate to succeed himself when

his two-year period was up. John B. Felton mentioned in the Republican convention at Sacramento in 1873 that Belcher would not be a candidate.³

Again Belcher returned to the bar in Marysville, where he continued in the practice for about ten years.

In 1878 Belcher was elected a delegate to the Constitutional Convention. He was one of the conservatives and opposed many of the provisions of the proposed Constitution. He became one of the seven Republican candidates for the new court under the Constitution in 1879, but was defeated.

A very signal honor came to Belcher in 1884, when he was chosen one of the original trustees of Stanford University. This alone speaks volumes considering the responsibility which devolved upon this group and the care that was used in selecting it.

In 1885 the Legislature passed the act authorizing the Supreme Court to appoint three commissioners to help it with its work. Belcher, W. W. Cope, and Jackson Temple were slated for these positions,⁴ but Cope and Temple were unable to accept, whereupon Belcher, Niles Searls, and H. S. Foote were appointed. While Belcher had been a member of the Court two years, it was as a commissioner that he made the great judicial showing of his life. He served in this capacity some thirteen years.

It has already been mentioned how Belcher and his older brother, William Caldwell, practiced many years in Marysville. There they also initiated a younger brother by their father's second marriage, Edward Augustus, into the ways of the law. All three of these men distinguished themselves in this field and all three closed their careers in San Francisco, Belcher as a commissioner of the Supreme Court; William Caldwell, as a member of the law firm of Mastick, Belcher and Mastick, one of the strong firms of its day; Edward Augustus Belcher was for a number of years a judge of the superior court of San Francisco, serving a part of the time as the presiding judge. He was very active in Republican circles and instrumental in organizing a number of Republican clubs throughout the state, including the Dirigo Club in San Francisco, which became the Union League Club in 1887. He served as vice president for a period, and maintained his home in its quarters some of the time that he lived in San Francisco.

ISAAC S. BELCHER

Twenty-Sixth Justice

Belcher died at his residence on Haight Street in San Francisco November 30, 1898. He had been in his chambers the day before and had made no complaint about his health. His death, therefore, came as a surprise and shock to everyone.

Belcher left surviving him his wife and four of the six children that had been born to him and his wife, the oldest of whom, Richard Belcher, became a leader of the bar in Marysville, and in California, serving as a member of the Board of Governors of the State Bar of California in 1940-1943.

Belcher's funeral was conducted by the Masonic Order in San Francisco and his ashes interred in the Masonic Cemetery of this community. They were moved to Woodlawn in 1912.

Belcher was a man of average size, about five feet nine or ten inches tall, weighing about 165 pounds.

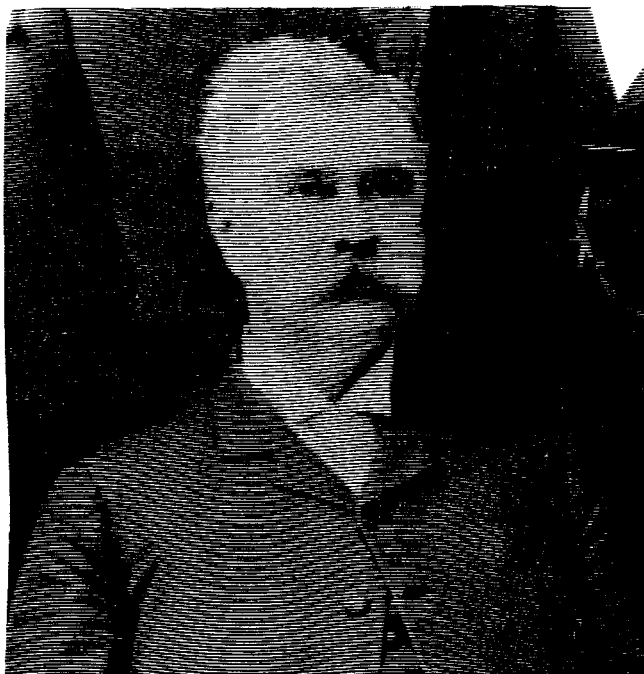
Belcher's son, Richard, advised the writer his eyes and hair were brown, and that he became somewhat "fleshy" in his last years.

Prestige and influence coming to Belcher on merit by imperceptible accretions over an extended period did not go to his head. No man has done solider work as a lawyer and a judge. A standing, resting on such a foundation, is sure to be as lasting and permanent as it is possible to make one.

FOOTNOTES

1. Shuck, *Bench and Bar of California* (1901), p. 541.
2. *Daily Alta California* (March 6, 1872).
3. Winfield J. Davis, *Political Conventions in California*, p. 326.
4. The writer has seen a letter in the possession of Jackson Temple's family from Thomas F. O'Connor, Clerk of the Supreme Court, to Temple, dated March 16, 1885, so stating.

THE CALIFORNIA JUSTICES



Elisha Williams McKinstry

Elisha Williams McKinstry was born in Detroit, Michigan, April 10, 1824, the son of David Charles and Nancy (Whiting Bachus) McKinstry. He had a distinguished family background on both his father's and mother's side.

McKinstry's forebears lived in and about Hillsdale, New York, for upwards of a hundred years. It was in 1815 McKinstry thought that McKinstry's father moved to Detroit.

The French influence was still strong in Detroit in McKinstry's youth, many of the native-born speaking a French-Indian dialect. He estimated the population at three thousand at the time of his first recollections. While the people were religious, this did not stand in the way of their engaging freely in sports and a wide range of frontier amusements. The fashions for women were in at least a degree those which had obtained in Normandy for two hundred years. Indians were a common sight, and congregated in great numbers at times.

McKinstry grew up in an atmosphere of enterprise and success. His father was a first citizen of Detroit in about every department of activity. He owned

several wharves, a warehouse, a ferryboat that operated between Detroit and the Canadian shore, a store, stagelines leading into Canada and the interior of Michigan, and did considerable construction work, which included building a flat-rail railroad between Detroit and Ann Arbor. He purchased an abandoned church at one time and converted it into a theater, which became a means of bringing considerable dramatic talent into the community. McKinstry mentioned that while all of the members of the family had a ticket, he doubted if his mother ever entered the place. Andrew Jackson, Martin Van Buren, Aaron Burr, Lewis Cass, were among his personal friends. McKinstry recalled the reception his parents tendered Van Buren when he came to Detroit once, and the grace and dignity with which they received him and his party. McKinstry Avenue in Detroit was probably named after him.

As a youngster McKinstry participated in the best educational facilities of the community. This included Detroit Academy, set up by a number of parents for the education of their children, where McKinstry was inducted into Latin, Greek, French, etc., besides the regular courses of the day. In 1836 or 1837 he attended a school known as Milner Hall at Gambier, Ohio, where boys were prepared for Kenyon College. Thereafter he went to a boarding school in Marshall, Michigan, conducted by a Presbyterian minister by the name of John P. Cleveland, whom McKinstry thought was an uncle of Grover Cleveland. When the McKinstry family moved from Detroit to Ypsilante about 1840, he continued his education there largely by tutors.

One of McKinstry's interesting experiences as a young man and which gives a clue to his tastes was attending a great Whig rally at Perrysburg, Ohio, where he heard Tom Corwin and William Henry Harrison. He mentioned how permeated Harrison's speech was with the pronoun "I" and how given he was to the use of the expression "Citizens of the Roman Republic."¹ "Harrison," said McKinstry, "looked tall, although he was really short. He was gray and erect, dressed in a suit of blue jeans. His voice was loud and sonorous. I was on the outskirts of the crowd but heard every word. He wore a kid glove on one hand and bore a bouquet in the other . . ." Corwin's speaking gifts had a magic all their own.

E. W. MCKINSTRY

Twenty-Seventh Justice, January, 1874 - October, 1888

It appears that McKinstry took up the study of the law with his uncles Justus McKinstry and Elisha Williams after whom he was named, in Hudson, New York.² He was admitted to the bar in New York in 1847.

It was as a clerk for the international boundary commission that McKinstry came to California. He came by way of the Isthmus, going first to San Diego. He arrived in San Francisco June 4, 1849.

"How ineffaceable" were "the impressions of the first day in San Francisco!" he observed some twenty-one years later in an admission day address. "The five dollar breakfast of a pair of eggs and a cup of black coffee! The honest miner in the Parker House, who put 1,100 ounces on the Caballo and lost it like a man—or a fool!" still lingered in his memory.³

After a short time in San Francisco he went to the City of Sutter on the Sacramento River a few miles below Sacramento. Sutter was at this time vying with Sacramento for supremacy. While residing here he was elected an assemblyman to California's first Legislature. The Sacramento district was at this time the most populated in California.

A review of the *Assembly Journal* makes it clear that McKinstry played a prominent part in this first Legislature and that as it came to an end he was accepted as one of its first leaders. A perusal of the *Journal* brings out many of the difficulties under which this Legislature did its work. McKinstry himself mentioned how it was done amidst the "distractions of monte, faro and lansquenet of practical jokes—mostly of the sham duel order—of quarter races and bullfights, billiard matches and fandangos."⁴ As relates to the work of this first Legislature, McKinstry observed: "But the pioneer Legislature passed four-fifths of all the general laws now standing upon the statute books, more or less amended; it did not pass a single special law for the benefit of an individual or a class, and I have yet to learn that it was ever charged that any measure was ever carried by corrupt or sinister influences. Can as much be said for all the successors of the 'Legislature of a Thousand Drinks'?"⁵

Without disparaging McKinstry's good work in the assembly it may be mentioned that two alterca-

tions between members took place while the assembly was in session. The one between Ogier and Watson resulted in blows. McKinstry was appointed one of the committee to recommend discipline for them. The other involved McKinstry himself and D. P. Baldwin, in connection with which they were ordered to apologize by reason of their disorderly conduct to "protect" the assembly's "dignity."

When the Legislature elected the members of the first Supreme Court, McKinstry voted for Hastings, Lyons, and Almond.

Under date of December 9, 1850, Governor Burnett appointed McKinstry adjutant general of the state. It appears that he never served, however, for the reason that no appropriation was ever made in connection therewith.

McKinstry went to Sacramento after the close of the Legislature, where he contracted cholera. This disease was killing people all around him. As soon as he could he returned to San Jose, where he lived for some time mostly on boiled milk. Towards spring of 1851 he went to Martinez, where he remained a few weeks.

A little later he settled in Napa, where he engaged in the practice of the law until January, 1853, when he became judge of the seventh judicial district. Much of interest could be said about his work as a trial judge in this district, but space does not permit. He made an excellent judge amid scenes at times turbulent and without facilities for handling law-breakers. He always treated the bar with great deference and was accorded a very high measure of esteem by the profession. He resigned November 13, 1862.

Soon after leaving the district court McKinstry married Annie Livingston Hedges (July 27, 1863). They were married by William Ingraham Kip, Episcopal Bishop of California, in Marysville.⁶ He was thirty-nine and she was eighteen.

McKinstry was the Democratic candidate for Lieutenant Governor in the election of September 2, 1863, but was unsuccessful. Soon thereafter he went to Virginia City, then to Humboldt, and later to Aurora, all in Nevada. In later years he spoke of his home in Aurora as "the prettiest house"⁷ in which he and his wife had ever lived!

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Aurora gathered to itself its full allowance of rough characters, resulting in much lawlessness. Early in 1864 three men, Daley, Masterson, and Buckley, killed a man by the name of Johnson. A Vigilance Committee was organized. McKinstry took part therein, but when this organization went beyond its original purpose of helping the law enforcement agencies, he withdrew. They hanged the three men mentioned. Another man was hanged in addition to these three, and several banished.

McKinstry was a candidate for a justice of the Supreme Court of Nevada in 1864, but unsuccessful.

McKinstry came to San Francisco in 1865, where he took up the practice in association with William Voorhies. He became the Democratic candidate for county judge in 1867. The fact that he had been a member of the Vigilance Committee in Aurora was used against him in this election. Father James S. Cotter published a statement in the *Alta California* outlining the gruesomeness of the hanging of the three men above mentioned and declared that McKinstry could have saved their lives.⁸ Apparently McKinstry's explanation of his part therein satisfied a great part of the voters as he was elected.

McKinstry served as county judge until he was elected judge of the twelfth judicial district, embracing San Mateo County and a part of the City and County of San Francisco, in 1869.

McKinstry was serving as district judge when he was nominated by the People's Independent Party for the Supreme Court to succeed Isaac S. Belcher. In the election of October 15, 1873, he won over Samuel Bell McKee, the Democratic candidate, and Samuel H. Dwinelle, the Republican.

McKinstry was a nominee of the Democratic and Workingmen's parties for the Court under the new Constitution of 1879, and elected a member of the new seven-man Court. He was the only man elected who had served on the old five-man Court. His was the highest vote cast in the election.⁹

On the death of Chief Justice Robert F. Morrison in 1887, Governor Bartlett inquired of McKinstry if he would accept the chief justiceship,¹⁰ but he did not wish it.

McKinstry participated in some of the most celebrated cases that have come before the Court and wrote the opinion for the Court in a number of them. A goodly representation of these opinions have found their way into the casebooks, many of them by the first scholars in the field of law teaching.

McKinstry resigned from the Court October 1, 1888, to become the chief professor in Hastings College of the Law, succeeding John Norton Pomeroy. (Charles W. Slack acted in this position for about three years following Pomeroy's death under a "temporary appointment."¹¹) McKinstry became dean a little later, succeeding Robert P. Hastings.

In 1889 a very signal honor came to McKinstry, when the University of Michigan, at that time regarded by many as having the best law school in America, singled him out to receive at its hands the honorary LL.D. degree.

McKinstry mixed practice with his teaching. After a period this did not meet with the approval of the trustees of the college, whereupon McKinstry in 1895 resigned. This inspired expressions of regret on the part of the students, who respected him highly. He thereupon gave his full time to practice in association with his son James Clarence. In 1896 John A. Stanley and H. W. Bradley joined McKinstry and his son.

McKinstry died in San Jose November 1, 1901. The funeral was private and his remains interred at Holy Cross Cemetery in San Mateo County. A simple gray stone marker under a native laurel marks the spot. His wife passed away in 1917 and her remains rest by the side of his. He left surviving him besides his wife, his four children, Laura Livingston McKinstry, Charles H. McKinstry, James Clarence, and Frances McKinstry.

McKinstry was a good-sized man, about six feet tall, weighing two hundred pounds, with a commanding and engaging presence. His characterization of his father as "a handsome man, tall, erect,"¹² would have applied equally to him. His speeches bear evidence of much good humor, and a fine sense of humor.

Influenced by his wife he became a Catholic in later life. His youngest daughter became a Carmelite nun and was known as Sister Elizabeth.

E. W. MC KINSTRY
Twenty-Seventh Justice

While of a nervous temperament (he so referred to himself in his "Reminiscences") and not without spirit, McKinstry could be calmness itself in the face of great personal danger.¹³ Principles rather than emotions and impulses alone in a great degree shaped his life.

FOOTNOTES

1. E. W. McKinstry, "Some Reminiscences," manuscript, copy in possession of C. H. McKinstry, Santa Barbara, Calif. (1938).

2. *California: Fifty Years of Progress* (S. F., 1900), p. 262.

3. *Sacramento Daily Union* (Sept. 13, 1871), 1.

4. *Ibid.*

5. *Ibid.*

6. *Alta California* (July 29, 1863), last page.

7. Letter to writer dated August 11, 1938, from C. H. McKinstry.

8. *Alta California* (Oct. 10-11, 1867, editions).

9. *California Blue Book* (1924), pp. 447-448.

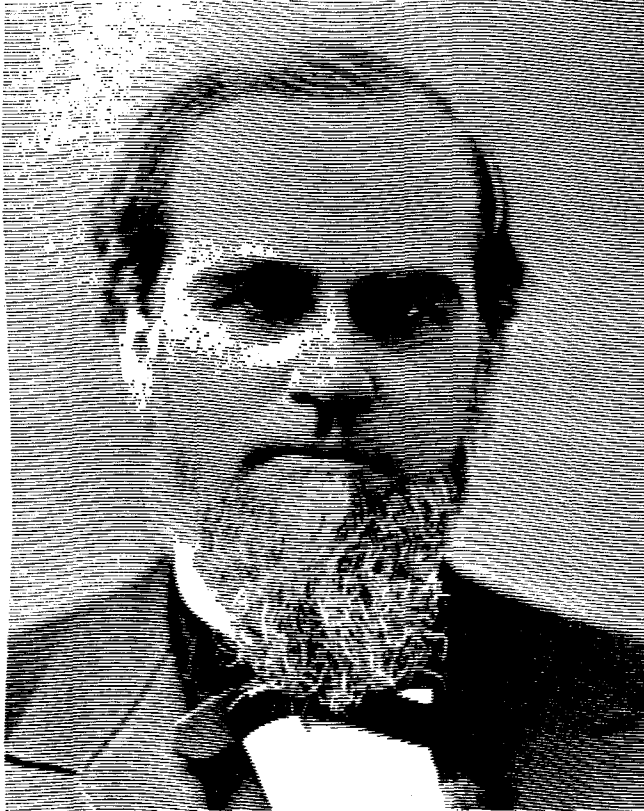
10. Letter dated March 3, 1887, in the possession of C. H. McKinstry.

11. *Hastings College of the Law Golden Jubilee*, p. 18.

12. "Some Reminiscences," *op. cit.*

13. *S. F. Call* (Feb. 28, 1883), 3.

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Robert Francis Morrison

From "At the Play," *Calif. Advertiser*, July 19, 1879, p. 15

Bancroft Library, University of California

Robert Francis Morrison was born in Kaskaskia, Illinois. While the year of his birth is ordinarily set out as 1826, the day and month are always omitted. The inscription on the silver plate upon his casket at the time of his death set out the date of his death but nothing more definite as relates to the date of his birth than that he was sixty years of age.² His father was Robert Morrison, one of six brothers³ who came from Pennsylvania to Illinois the last years of the eighteenth century, and the first of the nineteenth, some of whom had colorful personal histories; and his mother, a more than usually gifted lady, Eliza (Lowry) Morrison.⁴ While Morrison probably acquired his general education in Kaskaskia, it should be mentioned that Belleville, Illinois, a few miles from St. Louis, also became a Morrison family stronghold, and some of his general education may have been acquired there. The *San Francisco Chronicle* of March 3, 1887, men-

tions his graduation from college, without giving its name. At the legislative investigation initiated by David S. Terry in 1886, one of the witnesses, L. B. Mizner, spoke of his association with Morrison from the time they were students together in college.⁵ When Morrison went to Harvard Law School in 1849, he gave his residence as Belleville, and stated that he had had experience in a law office from April 1, 1845. As he is reported to have commenced his study of the law in the office of his brother Don (James Lowry Donaldson Morrison, ten years his senior),⁶ this likely had reference to his office. His mother died in Belleville in 1843, but the burial took place from The Immaculate Conception Church at Kaskaskia Island.⁷

Morrison's study of the law was interrupted by the War with Mexico. He served in a company commanded by his brother Don, known as Bissell's Regiment of Illinois Volunteers, and participated in a number of battles, including the battle of Buena Vista.⁸ *National Cyclopaedia of American Biography* states he was a noncommissioned officer in this regiment.⁹ He probably saw more action than any of the men who served in this war who later became justices of the Supreme Court of California. Don Morrison was awarded a sword by the Illinois Legislature in recognition of the part he played in the war. He was prominent in politics, a friend of Lincoln, and succeeded Lyman Trumbull in Congress.

Upon his return from the war Morrison resumed his legal studies. Pursuant thereto he entered Harvard Law School November 5, 1849, and remained a half term, to January 17, 1850.¹⁰

Did Morrison come to California more or less immediately after leaving Harvard? The writer cannot answer this question with certainty, although it appears he might have done. The *Alta California* of March 3, 1887, states that he came "early in 1850." Joseph W. Winans, a New Yorker, in whose office Morrison studied law after he came to California, stated in 1886 that he had known Morrison thirty-six years, which would have gone back to 1850.¹¹ Other reports are to the effect that he arrived in 1852.¹² The *San Francisco Call* of March 3, 1887, states that he went from San Francisco to Sacramento in 1853, where he took up the study of the law anew in the office of Joseph W. Winans, and that he was married "very early in life" to "Miss Stettinius

ROBERT F. MORRISON

Twenty-Eighth Justice, November 10, 1879 - March 2, 1887¹

Thirteenth Chief Justice

of St. Louis, Mo." The *Alta California* of March 3, 1887, states they were married in St. Louis in 1853.

Upon his admission to the bar he is reported to have commenced practice in Sacramento in association with his older brother Murray and J. Neely Johnson.¹³ The 1855 Sacramento directory lists him as associated with J. Neely Johnson and John B. Weller. However, he is listed in the 1854 and 1856 San Francisco directories as a practicing lawyer there at these dates. There was apparently no 1855 San Francisco directory. Whatever the details, it appears that he was giving both Sacramento and San Francisco a trial. There can be no doubt that he was in Sacramento in 1857 and remained there until 1860 or 1861. The Sacramento directories of 1857-1858 and 1858 set him out as district attorney there, and the 1859 directory as ex-district attorney.

Morrison ran for the state Senate in Sacramento County in 1859 on the "Southern ticket,"¹⁴ but was defeated by Robert C. Clark, the Anti-Lecompton candidate. He is reported to have gone to Virginia City about this time.¹⁵ Be that as it may, he was back in San Francisco again in 1861, and this continued to remain his residence the rest of his life.

While Morrison practiced alone part of the time, he was also associated with other men a number of years. He is set out in the San Francisco directories of 1862, 1863, and 1864, as associated with James T. Boyd. He is listed alone in 1865 directory, but in the 1866 to 1870 directories he is set out as associated with Delos Lake. When Lake became United States District Attorney in 1865 he took Morrison along with him as his assistant.

Morrison was elected judge of the fourth judicial district in 1869. As his term was coming to a close in 1875 he became a candidate for re-election. The *Alta California* of October 17, 1875, published a "memorial" signed by upwards of two hundred and fifty lawyers, stating that they considered his re-election "not only extremely desirable, but as necessary to the public interest." "We endorse him as fully qualified by his experience . . . for the past six years, . . .," it set out in conclusion. The sponsors of this statement included about all, if not literally all of the big names of the San Francisco Bar. One would have supposed the sentiment expressed unanimous had there not appeared in the same paper a letter in behalf of Morrison's opponent, James R. Crittenden.

This communication, signed only "Lawyer," spoke of Morrison as "narrow-minded" and "of small culture, arrogant and dictatorial in his manners, and vindictive to such an extent that lawyers whom he dislikes go into his Court with the certainty that he" would "defeat them if it" were "possible for him to do so." Morrison was re-elected.

Morrison was serving in this position when he became a candidate for Chief Justice of the new seven-man Court under the Constitution of 1879 on the Democratic and Workingmen's tickets.

There was a flock of candidates for the Court at this time—twenty-three! A number of them were among the most respected names in the profession. His opponents were Nathaniel Bennett of California's original three-man Court, and Augustus L. Rhodes, a former Chief Justice. Morrison won. The others elected were McKinstry, the only one retained by the electorate from the five-man Court, and Thornton, McKee, Ross, Sharpstein, and Myrick. Myrick was the only Republican elected.

As Chief Justice, Morrison got off to a good start. *Morgan v. Menzies* 60 Cal. 341, written by him his second year on the Court, is a leading case in pleading. James Barr Ames included it in his casebook on pleading in 1905, and Edward W. Hinton in his casebook on pleading, 3rd ed., 1932. Alden Ames included *Watson v. Damon* 54 Cal. 278, written soon after Morrison came to the Court, in his casebook (1930) on California pleading and practice.

After four years on the Court Morrison had the misfortune to suffer a paralytic stroke. With the recurring attacks he was greatly handicapped the rest of his life. He carried on as one burdened with a heavy load. Added to the difficulties incident to his bad health, he had to face the investigation by the Assembly as relates to his fitness to continue in office owing to the condition of his health. A considerable number of witnesses, many of them the most eminent men in the profession, were interrogated by the Assembly's committee. In the end the charges of incompetency were dismissed as "being wholly unsupported by the evidence."¹⁶ The evidence was overwhelming that Morrison's sickness had in no manner impaired his mental powers. This investigation amounted to a standing on the part of the profession to be counted as relates to their estimation of Morrison and Sharpstein. On the whole the state-

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ments by the witnesses could only have been heartening to them. There were a few who registered disappointment in the Court. Solomon Heydenfeldt, a former member of the Court, in part testified: "It is my opinion, and the general opinion of the bar, that it is a weak Court." Undoubtedly the great arrearage of undecided cases, a condition inherited from the old five-man Court, was a handicap to the Court's popularity. Some estimated the Court was as much as five years behind. Sizing these men up after the years it can only be concluded that the men who comprised this Court were on the whole able men.

Morrison died in San Francisco March 2, 1887. He left surviving him his wife. They had no children. She was so overcome that she could not attend the funeral, which was held at St. Mary's Cathedral. Archbishop Patrick W. Riordan officiated and Father John J. Prendergast gave the eulogy. His remains were interred at Calvary Cemetery, and when the bodies were removed therefrom years later, they were taken to Holy Cross Cemetery at Colma. The bar and all the courts by resolutions, adjournments, and attendance at the funeral joined hands in noting Morrison's passing. The funeral was an elaborate affair, almost in contrast to the simplicity of Morrison's life and tastes.

Physically, Morrison was a small dark-featured man. His jet black hair grayed rapidly his last years.¹⁷ He appeared grave and serious-minded in a more than usual degree. He is reported to have always dressed in black.¹⁸ He was of Irish stock. The cemetery records went so far as to set his "nativity" out as "Ireland."

While there was much that was striking and even dramatic in Morrison's family background, and his own life cast amidst a series of unusually stirring historical events, there was nevertheless nothing dramatic or breathtaking about Morrison's career.

The most outstanding feature of his life was his steadiness and regularity in the midst of situations sometimes turbulent.

It may well be that Morrison was not accorded his just dues as to ability and judicial worth by some spokesmen of the popular mind at the time of his death. "He was not a great lawyer, and it could not be said that when he came to the bench of the

Supreme Court he was a great jurist," was the somewhat negative editorial observation of the *San Francisco Bulletin* of March 2, 1887. "As a lawyer his attainments were fair . . ." is in part the way one of the obituary sketches of the same paper expressed it. "There doubtless have been greater judges" commented the *San Francisco Post*.¹⁹ However, he was universally credited with the honesty, integrity, and dignity necessary to discharge well his duties as Chief Justice. Unquestionably he was a man of standard ability, judgment, and industry. As relates to honesty and integrity, he was without a superior. He was the essence of conscientiousness, both as relates to public office and in his private and personal life.

Fate dealt Morrison a cruel blow when his greatest opportunity for a big showing came, and this should not be overlooked in passing final judgment upon him as a jurist.

FOOTNOTES

1. It is not strictly correct to single Morrison out as the twenty-eighth justice as he came to the Court simultaneously with five other new men. He has been set out as the first of these new men to come to the Court to give regularity to the chronology.
2. *S. F. Call* (March 4, 1887). *S. F. Post* (March 4, 1887).
3. John Reynolds, *Pioneer History of Illinois* (1852), pp. 129-135.
4. William Hyde and Howard L. Conrad, *Encyclopedia of the History of St. Louis* (1889), p. 1568.
5. Appendix to the Journals of the Senate and Assembly, Vol. VIII, 27th Session, 1887, Report on Morrison and Sharpstein, p. 24.
6. *Biographical Directory of the American Congress* states Don Morrison commenced practice in Belleville. He later practiced in St. Louis, and died there.
7. Letter dated July 18, 1957, to writer from the church mentioned.
8. 68 Cal. 650.
9. Vol. XII, p. 125. Also *S. F. Chronicle* (March 3, 1887).
10. Letter to the writer from Harvard, May 3, 1957.
11. Appendix to the Journals of the Senate and Assembly, *op. cit.*, p. 39.
12. *S. F. Chronicle* (March 3, 1887).
13. 68 Cal. 651.
14. *Alta* (March 3, 1887).
15. *S. F. Chronicle* (March 3, 1887).
16. Appendix to the Journals of the Senate and Assembly, *op. cit.*, p. 66.
17. *S. F. Call* (March 3, 1887).
18. *S. F. Chronicle* (March 3, 1887).
19. *S. F. Post* (March 3, 1887). Also *Daily Alta California* (March 4, 1887).

ERSKINE M. ROSS

Twenty-Ninth Justice, January, 1880-October 1, 1886¹



Erskine Mayo Ross

Erskine Mayo Ross, son of William Buckner and Elizabeth Mayo (Thom) Ross, was born June 30, 1845, near the village of Brandy Station, Virginia, on his father's 1,000-acre land holdings known as Bel Pre.²

His first school was one his parents set up with some neighbors near his home. At ten he attended a military school in the Culpepper County courthouse and at fifteen he entered Virginia Military Institute at Lexington, where at the outbreak of the Civil War he was ordered to Camp Lee, Richmond, the day Virginia seceded. With others from the institute, though mere boys, he drilled recruits for the Confederate Army. In 1863 he was back again in the institute. Stonewall Jackson had been one of his teachers until he left for the war.

In 1864, Ross' class was called out again, and played an important part in winning the battle of New Market, "saving the granary of the South."³

At twenty, in 1865, Ross was graduated from Virginia Military Institute. His is an honored name there: Fine oil paintings of Ross and his brothers, George and John D., grace conspicuous places in the

library. Ross' name appears on a beautiful monument on the campus with the others who took part in the battle of New Market.

The Ross family fortunes are reported to have become considerably reduced by the war. Upon graduation Ross worked with a business house in Richmond for two or three years. In 1868 he came to Los Angeles and studied law in the office of a maternal uncle, Cameron E. Thom. The next year he was admitted to the bar in the local district court. He was not admitted to practice in the Supreme Court of California until 1875, only a few years before he became a justice.

Ross became associated with his uncle in the practice, and laid a foundation for professional distinction and financial independence, largely in fortunate land investments. He also succeeded in his orange, lemon, and olive grove in Glendale, known as Rossmoyne, a beautiful horticultural project.

At thirty-five, Ross became the only candidate elected from southern California on the seven-justice Supreme Court of California under the Constitution of 1878-1879 on the Democratic, Workingmen's, and Prohibition tickets. He had never before held public office. Ross with Sharpstein drew a three-year term and was re-elected for ten years in 1882. He resigned on October 1, 1886, after seven years. There is a hint that he was not entirely happy as to the Court's position in some matters.⁴ Ross resumed practice for a short time in Los Angeles with Stephen M. White.

In 1887 Grover Cleveland named him United States District Judge for the new southern district of California. In 1895 he was promoted to the United States Circuit Court and served there until he resigned in January, 1925. Cleveland planned to name him to the United States Supreme Court, but Field's long tenure prevented that. Taft also thought well of him in this regard.⁵ He served on the federal bench for more than thirty-eight years, which, with his seven years on the Supreme Court of California, made his judicial service forty-five years. Expressing a universal sentiment, President Coolidge wrote and praised Ross for his work on the bench.⁶

A review of the cases which Ross took part in as a federal judge would bring to light many cases which excited public notice: As relates to Arthur H. Noyes, judge of the district court of Alaska, the facts involved are said to have become the basis for Rex

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Beach's "The Spoilers."⁷ The Chilean ship *Itata* matter (49 Fed. 646) may be mentioned. The fraud cases of the northwest, where the United States recovered much valuable timber land, also in part came before Ross.

Some of Ross' opinions as a justice of the Supreme Court of California have found their way into the casebooks, but it is his rulings and decisions on the federal bench that place him in the top ranks as a judge.

W. H. O'Melveny, speaking of the historic railroad strike of 1894 said: "... Outside of Chicago, Los Angeles was the hot spot. All railroad transportation ceased, and the railroad yards were congested with empty cars, and engines without fires; violence, fights, conflicts with police prevailed. ... There seemed no force capable of mastering the strikers. The railroad companies obtained the usual set of injunctions. There were the usual violations, and the usual proceedings in such violations. As soon as Judge Ross could act, punishments swift and sure were meted out ... and order restored ... after that the whole Pacific Coast ... the whole community had a sense of security, as long as Judge Ross was on the bench. It centered on him. It is difficult to define, but it existed to a certainty. We knew that there was one man who would courageously and without fear punish violators of the law. ..." The part Ross played in all this was not taking sides with either the railroads or their employees, but a putting down the violence, destruction of property, and lawlessness that went with it. Also he leaned over backward to shut out personal influence in decisions where the counsel who appeared before him were his good friends or men of unusual distinction in the profession.⁷

Ross' will, written at eighty in his own hand, sustains O'Melveny's high appraisal in another department of life. A million dollars' worth of property had come into his hands. He said that he had acquired his material substance by hard work, and almost all of it out of the ground. ... For this he wrote "I thank God" and went on to say that he had "never spent much of it selfishly."

To his only son, Robert Erskine Ross, a man fifty-three at Ross' death, he bequeathed his letters, commissions, pictures, papers, books, personal effects, and \$200,000. To George, the only one left of his brothers and sisters, \$200 a month for life. But he

predeceased Ross. During the administration of his estate, his executors were authorized to pay out as much as \$100,000 to needy relatives.

He gave \$100,000 to the American Bar Association, the income from which was to be given as a prize for the best discussion on a subject to be suggested annually by the association.

Virginia Military Institute, \$40,000.

Alpha Tau Omega Fraternity, which he had helped to found at VMI, \$5,000.

Children's Hospital, Los Angeles, \$20,000.

Orthopaedic School-Hospital for Crippled Children, Los Angeles, \$5,000.

Salvation Army, Los Angeles, \$5,000.

The Christine W. Stephenson Pilgrimage Play organization in Los Angeles, \$20,000, "to increase, if possible, the impressiveness and effectiveness of the picture of the life, suffering and death of our Blessed Lord and Savior for the benefit of humanity."

Memorial Home for Girls in Richmond, Virginia, in memory of his mother and sister, Mary Cameron Ross Buford, \$50,000.

Besides other bequests, he gave the residue to St. Paul's Episcopal Church of Richmond, Virginia; St. Paul's Episcopal Church of Los Angeles; and Grace Protestant Episcopal Church in San Francisco.

Still another direction in Ross' will points to the manner of man he was. "I wish," he wrote, "my body buried in my lot in Hollywood Cemetery, Los Angeles, and should it be desired to have the spot marked, let it be only a plain granite slab inscribed only with my full name, the date of my birth, and the date of my death."

His wish was carried out: The bronze plate set in a small stone probably did not cost more than fifty or a hundred dollars.

Ross was under average in physical stature, and his eyes, brown.⁸

At the University of California at Los Angeles the Chapter of Phi Alpha Delta Legal Fraternity is named after him, linking his with the great judicial names of America.

ERSKINE M. ROSS
Twenty-Ninth Justice

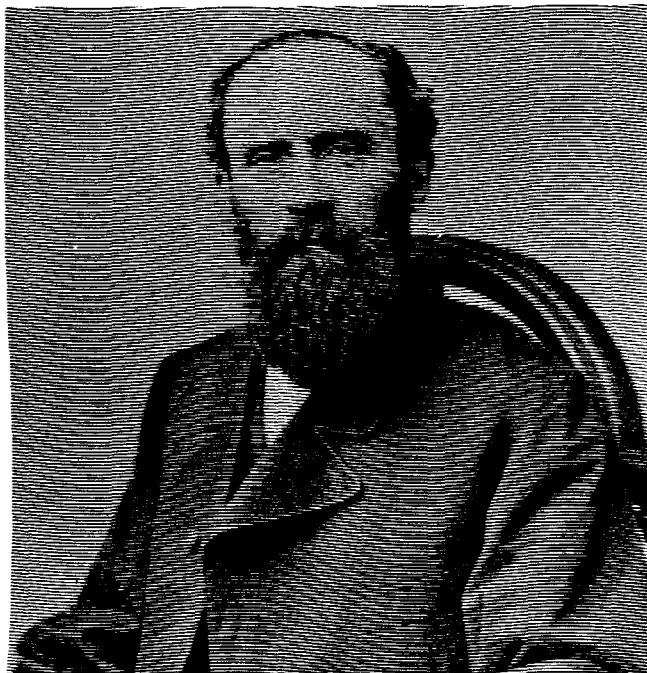
Ross was married twice, first to Inez H. Bettis, May 7, 1874, who was the mother of his son. She died in 1908. In 1909 he married Ida Hancock, the widow of Major Henry Hancock. She died in 1913. Ross died in Los Angeles December 10, 1928.

It is not hard to give a fair appraisal to a life like Ross'. The verdict would be the same by any person contemplating it. It was one of a high sense of responsibility, official and personal. While really too young for such things, he nevertheless tasted the excitement and apprehensions growing out of his active participation in the Civil War. His part in the battle of New Market alone could well constitute a chapter in a longer discussion of his life than this sketch involves. The influence of the military institute and the war upon him was marked. Through life his soldierly bearing was one of his outstanding features. It would be hard to point to a life with more of good example and inspiration in it.

FOOTNOTES

1. Ross has been designated as the twenty-ninth man to come to the Court to make the chronology regular.
2. There are a number of excellent short sketches of Ross' life. Among these may be mentioned Oscar T. Shuck's in *History of the Bench and Bar of California* (1901), p. 657; H. W. O'Melveny's in *American Bar Association Journal* (Sept., 1935), p. 579, also published in *Reports of American Bar Association* (1935), Vol. 60, p. 72; and Alexander Macdonald's, *American Bar Association Journal* (Dec., 1947), p. 1173. Where the facts recited in the within sketch are mentioned in any of the foregoing sketches, no citation is given.
3. 1839 V.M.I. 1939 Centennial brochure, p. 23.
4. *L. A. Examiner* (Dec. 11, 1928), sec. II, p. 1, col. 1. See *In re Buckley* 69 Cal. 1, 10 P. 69.
5. Macdonald, *op. cit.*
6. *S. F. Chronicle* (April 10, 1925), 7.
7. *L. A. Examiner* (Dec. 11, 1928).
8. Interview in 1937 with Elisa Prichard of San Francisco, daughter of Captain William B. Prichard and Margaret Johnston Prichard. The latter was a daughter of Albert Sidney Johnston of Civil War fame. Miss Prichard stated Ross frequently visited with the Prichard family when in San Francisco.

THE CALIFORNIA JUSTICES



John Randolph Sharpstein

John Randolph Sharpstein had two careers, one in Wisconsin and the other in California. He was born in Richmond Mills (still a rural area), Ontario County, New York, May 3, 1823, the son of Luther and Rachel (Johnson) Sharpsteen. His grandfather, Peter Sharpstone, had come to Ontario County about the turn of the century. On his father's side he was of Dutch stock. Before coming to Ontario County they had lived many generations in Dutchess County, where they had owned a great deal of land. They were for the most part farmers. Sharpstein's paternal great grandfather, with two of his three sons, fought in the Revolution on the side of the colonies. The other son sided with the British and for this the father was punished by the New York colony.

The reader will already have noted the various ways of spelling the family surname. There were a number of other ways also, as Sharpsturn, Sharpsteine, and Sharpstorn, Sharpstene, Sharpstyne, etc. Sharpstein spelled it Sharpsteen in his earlier years, but changed it sometime after his marriage. His son, William C. Sharpsteen,² a well known lawyer of San Francisco many years, from whom much of the information herein set out was received, told the writer he never ascertained the reason.

Sharpstein's grandfather on his mother's side, John Johnson, had four enlistments in the Revolutionary War to his credit. This came about from the practice of enlisting for such periods as they could be away from home, returning to plant their crops, harvest, etc.

Sharpstein received his elementary education in the common schools of Richmond Mills and Ray, Michigan, where the family moved when he was twelve or thirteen.

Sharpstein's parents expected him to follow the ancestral calling of farmer, but from an early date his tastes ran strongly along intellectual lines. An academy principal encouraged him in this regard and loaned him a number of good books, which he read before the fireplace in the evenings after the family retired by the light of the pine knots he specially selected during the day. A little later he went to Norwalk, Ohio, where he was permitted to work for his keep while attending a seminary. This did not continue long, however, as his father died, and it was necessary for him to return and help with the farm work. It was probably about this time that he attended a branch of the University of Michigan located at Romeo, near Ray. Also he took up the study of the law about this time. It is not known with whom he studied, if anybody. He was admitted to practice in the circuit court which included McComb and several other counties within its jurisdiction in 1846. The examination was conducted by a commissioner in the adjoining County of Oakland.



*Sharpstein and Catherine Crittenden Sharpstein
at the time of their marriage.*

JOHN R. SHARPSTEIN

Thirtieth Justice, January, 1880 - December 27, 1892¹

He thereupon took up practice. He himself became a court commissioner like the one who had examined him for the bar for McComb County a year or two after his admission.

Sharpstein married Catherine Crittenden of Ray in Romeo, Michigan, November 17, 1845. He first met her when he had occasion to go to a local doctor in connection with ripping open an instep with a scythe in the harvest field. She was the doctor's wife's younger sister. Jay Pitt, the oldest of their four children, was born while they still lived in Michigan. Their other three children were born in Wisconsin.

In 1847 Sharpstein moved to Sheboygan, Wisconsin, where he continued in the practice, and became the prosecuting attorney for the county the following year. Here he became acquainted with Edward J. Ryan, later Chief Justice of Wisconsin. Judge Ryan initiated Sharpstein into the art of politics. Judge Ryan greatly disliked the incumbent prosecuting attorney of Kenosha County and in 1849 persuaded Sharpstein to move there and qualify himself to run against him. As Judge Ryan went about the county he often took Sharpstein with him and quietly introduced him to the voters and told them of his good qualities. There was so little publicity about it that the incumbent, supposing he was practically unopposed, did not exert himself, and lost.

Sharpstein served as a state Senator in the fifth and sixth sessions (1852, 1853) of the Legislature. While serving in this position he was appointed by President Franklin Pierce United States District Attorney for Wisconsin. He thereupon moved to Milwaukee. His work as United States District Attorney has been highly praised. With much opposition he pushed the appeal of the fugitive slave case, *Ableman v. Booth*, up to the Supreme Court of the United States, where Chief Justice Taney wrote the opinion (18 How. 476, 21 How. 506). As in a number of other states, sentiment on slavery was sharply divided in Wisconsin. It has been mentioned that he probably certified a part of the record himself. He served in this position until 1857, when Buchanan appointed him postmaster of Milwaukee, which position he held until 1860. He was also a delegate to the Democratic national convention in Charleston, South Carolina, that year and supported Stephen A. Douglas for President. When Lincoln was elected he followed Douglas in supporting him.³

Upon giving up the postmastership of Milwaukee, Sharpstein became one of the proprietors of the *Milwaukee Daily News*.

In 1862 he was again elected to the Legislature, this time to the lower house. His work here was characterized by support of measures designed to strengthen the hand of Lincoln. Upon completing his term in the Legislature, he took up practice in Milwaukee, becoming associated with H. L. Palmer, who has been spoken of as one of the most distinguished lawyers of the northwest. Also during this period he served for a while as superintendent of schools in Milwaukee.

It was a severe attack of rheumatic fever in the winter of 1863-1864 which induced Sharpstein to consider moving to California to escape the rigors of the Wisconsin winters. He came by way of New York and the Isthmus, bringing his oldest son, Jay Pitt, with him, arriving in San Francisco in June, 1864. His wife returned to McComb County, Michigan, with her babe (William Crittenden) and stayed with relatives (the other two children—girls—had died) until she could follow him to California. San Francisco became Sharpstein's home the rest of his life.

In San Francisco Sharpstein addressed himself to the practice, becoming associated after a period with John H. Smyth and later with Horace M. Hastings. While practicing he also prepared a work on insurance law, which was published in 1872 by Sumner Whitney & Co., entitled *A Digest of American, English, Scotch and Irish Reports of Life and Accident Insurance Cases*. Along with praise⁴ this work was also given a poor rating in terms so harsh that motives of vindictiveness may be suspected.⁵

Sharpstein was appointed judge of the twelfth judicial district in 1874. When he became a candidate to succeed himself in 1875 he was defeated by William P. Daingerfield. He had a taste of dirty politics in the campaign. Upon leaving the court he resumed practice and sometime thereafter became associated with Charles E. Travers.

The first Chief Justice of California, Serranus Clinton Hastings, selected Sharpstein as one of the group of distinguished lawyers who became the first board of trustees of Hastings College of the Law when it was founded in 1878.

THE CALIFORNIA JUSTICES

Sharpstein became a candidate for the constitutional convention on the Workingmen's ticket in 1878, but was defeated. When the new Constitution was presented to the people for adoption he worked for its acceptance. He was nominated for the Supreme Court of California by the Workingmen's Party, whose convention held June 3, 1879, in San Francisco, was presided over by Dennis Kearny. His name came up in the Constitution Party convention but it did not nominate him. Nor did he win the nomination in the Democratic convention. Later the Democrats placed him on their ticket when T. B. Reardon withdrew his candidacy. He was one of the seven men elected, drawing one of the two short terms of three years. Temple, Paterson, McFarland, Searls, Beatty, Fox, DeHaven, Garoutte, and Harrison came to the Court the period he served, in addition to the new men who came to the Court at the same time he did; some of them, like McFarland, for instance, becoming the best friends of his entire life. Some of the men who came to the Court when he did were serving when he died.

Sharpstein made one of the best records that has been made on the Supreme Court in its entire history. A relatively high number of his opinions have been incorporated into casebooks compiled by the first scholars of the law.

Fine as Sharpstein's record was, he nevertheless had to face the legislative investigation initiated in 1886 against Chief Justice Morrison and him on charges of incompetency by reason of old age and sickness. In this he was completely exonerated.⁶

Sharpstein died in San Francisco December 27, 1892. His remains were interred in Mountain View Cemetery, Oakland. He left surviving him his wife and the two sons mentioned above. He was affiliated with no church, but was an active Mason. He did not

leave a great estate. Physically, Sharpstein was a large, well-built man over six feet tall weighing his last years more than two hundred pounds. This was in contrast to his thin dyspeptic condition when he came to California. His earlier years in California he wore a flowing blond beard ("a beard like Moses'")⁷ coming almost to his waist, giving him much of a patriarchal appearance.

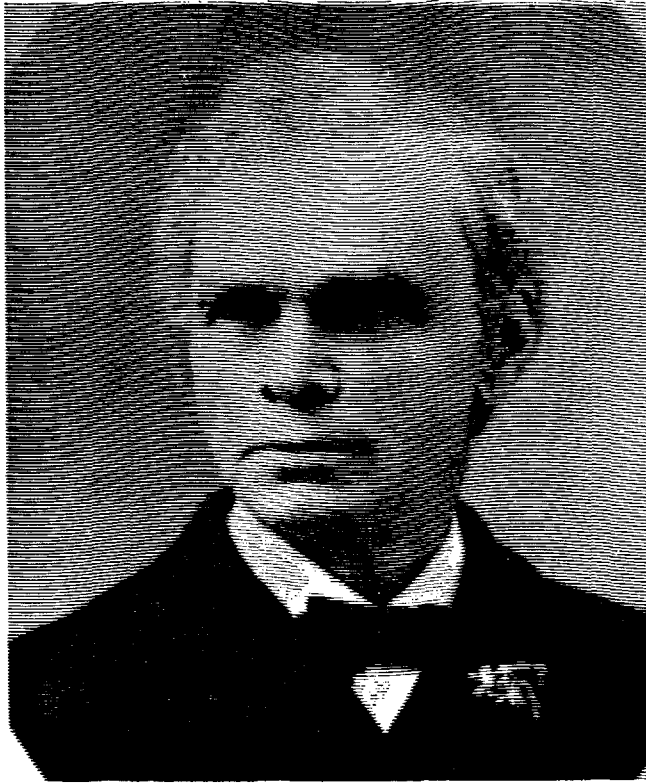
Memorial services in honor of Sharpstein were held in the Supreme Court January 23, 1893.⁸ Among other things his many fine personal qualities were reviewed by those who knew of them first hand. The resolutions of the San Francisco Bar Association presented by Thomas I. Bergin referred to his "commanding stature and imposing presence," his regular features, blue eyes and large expansive forehead. "His expression was mild and pensive, his manners simple, cordial, and unaffected, his voice pleasant, his conversation agreeable." His fine sense of humor was mentioned. Chief Justice Beatty mentioned how "he seemed actuated by no feelings except charity and kindness to all his fellow-men."

FOOTNOTES

1. Designated as the thirtieth justice to make the chronology regular.
2. Died September 20, 1949.
3. Shuck, *A History of the Bench and Bar of California* (1901), p. 554.
4. *Alta California* (Oct. 19, 1875), 2, col. 4. "The legal and insurance journals are with a single exception unanimous in its praise."
5. *Alta California* (Oct. 17, 1875). This writing furnishes a superb example of unrestrained abuse of a candidate for office.
6. Appendix of Journals of the Senate and Assembly, Vol. VIII, 27th Session, 1887, Report of Morrison and Sharpstein, p. 66.
7. William C. Sharpsteen's characterization.
8. 96 Cal. 675.

SAMUEL BELL MCKEE

Thirty-First Justice,¹ January, 1880 - December, 1887



Samuel Bell McKee

From painting in possession of daughter, Nellie Adelaide Lang

Samuel Bell McKee was born near Belfast, County of Down, Ireland, in 1822. Portaferry has been mentioned as the particular town.² There is a tradition in the family that it was Grey Abbey, ten or fifteen miles to the north, and like Portaferry on Strangford Lough (Loch).³ He was of Scotch ancestry. His family is reported to have come to America when he was about twelve, settling first in Charleston, South Carolina. From there they moved to Georgia, residing in various places, including Augusta and Milledgeville.⁴ He is reported to have graduated from the old Oglethorpe University.⁵ This cannot be verified from the college records, however, as his name does not appear after 1839 and those prior thereto are lost.⁶ Oglethorpe was hit a hard blow by the Civil War and in 1872 ceased to exist. In 1913 it was re-established by the Presbyterians.

Upon completing his formal general education McKee went to Tuscaloosa, Alabama. There he studied law with Henry W. Collier. The latter became a member of the Supreme Court of Alabama in 1837,

later Chief Justice, and still later state Governor. McKee became a citizen of the United States here February 17, 1843.⁷ Soon thereafter he married Martha Davis, a daughter of Edward and Ann Livingston (Cain) Davis, North Carolinians.

From Tuscaloosa McKee is reported to have gone to Panola County,⁸ Mississippi, and engaged in the practice, meeting with success. This county, near Arkansas, would appear to have been more or less a frontier community not far from Memphis, Tennessee. As with so many others of that period the "novel and until then unheard of attractions of the Golden State induced him to sever the connections he had formed in Mississippi,"⁹ and in 1853 he came to this state, settling in Oakland: "I think it is the prettiest country I ever saw—beyond all doubt the loveliest," wrote Joseph G. Baldwin to his wife, referring to Oakland as of 1854.¹⁰ Oscar L. Shafter told of the houses built among the "ancient and gigantic oaks standing from 40 to 60 feet apart" with a "sward beneath" "covered with a luxurious growth of grass and flowers" in a climate of "unending June."¹¹

"Sam. Bell McKee, Attorney-at-Law and General Collecting Agent, Oakland, Cal., will give prompt attention to all business entrusted to his care in the Courts of Alameda County and the Counties adjoining" ran his card in "the advertising columns of the first local paper of Alameda County, published in 1854."¹² His place of business was set out as "... the east side of Broadway near the Plaza." This still constitutes the heart of downtown Oakland.

McKee is reported to have gotten in on the Mexican and Spanish land grants litigation, of which there was a great deal in the counties around the San Francisco Bay, and was a source of fine fees California's first years. Often the attorneys took their pay in land. Did the "ten blocks of land almost in the very heart of the City of Oaks," which McKee is reported to have "purchased" his first years in Oakland, and said to have been worth "the comfortable figure of \$100,000.00"¹³ at the time of his death, comprise property to which he helped establish the title or was this more or less newspaper puff talk?

In 1856 McKee was elected county judge of Alameda County. The rest of his life, excepting the last year, was spent on the bench. From the position of county judge he stepped in 1858 to that of judge of the third judicial district, comprising the counties of

THE CALIFORNIA JUSTICES

Alameda, Contra Costa, Santa Clara, Santa Cruz, and Monterey. John E. Richards has given the following as relates to McKee's election to this position:

When the judicial term of Judge Hester (Craven) expired he was not re-elected, and as I am told, for a peculiar reason. In the district of Judge Hester there were many lawyers of several degrees of merit. The leader of the San Jose bar was William T. Wallace during the fifties. The leader of the Monterey bar was D. R. Ashley, and of the Santa Cruz bar was R. F. Peckham during the same period. This trio of lawyers each worked hard at their cases, tried them well, and in consequence, were very successful each at his own bar. Their success made other lawyers of less studious habits jealous, and as the time for another election came on, they spread the campaign rumor that this trio of lawyers "owned" Judge Hester and that he always decided their way. This opposition nominated Samuel Bell McKee upon this issue and succeeded in electing him. Accordingly Judge McKee became District Judge in 1858, and remained so until the change in the District made in 1872, by which the old Third with some variations became the Twentieth Judicial District and David Beldon, Esq. was elected Judge.¹⁴

Halley's *Centennial Book of Alameda County* states that Wallace was one of McKee's competitors for this position. Also that Judge Hester "was beaten badly."¹⁵ Having been an active Breckenridge Democrat in the 1860 convention, McKee was barely re-elected in 1863. But he won by a substantial majority in the election of 1869, and again in 1875.

McKee had aspirations for the Supreme Court but it took him some time to get there. His name was presented for this Court in the Democratic convention at Sacramento in June, 1869, to succeed Sawyer, but was withdrawn in favor of William T. Wallace who was elected in the election that followed.¹⁶ He was a contender again in the June, 1871, convention to succeed Rhodes, but after a number of ballots lost to Seldon S. Wright who failed in the election. McKee won the nomination in the 1873 Democratic convention to fill the vacancy occasioned by the death of Chief Justice Sprague, but was defeated by McKinstry. McKee, therefore, did not come to this Court by an easy road. In 1879 he received the nomination of both the Democratic and Workingmen's Parties and was one of the seven men elected to this new Court, taking his place thereon the following January. With Myrick he drew a seven-year term. His name was presented for re-election in the Democratic convention of 1886, but Byron Waters won the nomination. Waters failed in the election.

McKee made a good record on the Court and a number of his opinions have found their way into the

casebooks prepared by leading scholars in the law teaching profession. He acted as Chief Justice his last two years on the court in the absence of Morrison by reason of sickness, and was frequently mentioned for his successor. By a striking coincidence these men died the same day.

Upon leaving the Court McKee became associated with his son, Samuel Bell McKee, Jr., in the practice in Oakland, but he did not get much into active practice before his death. The latter part of 1887 he went to southern California and was planning to go on to Mexico City. In the south he contracted a severe cold and returned to his home in Oakland, where he developed pneumonia, from which he died December 2, 1887.

The funeral took place from his residence at 1033 Adeline Street, Oakland, and was under the direction of Dr. Benjamin Akerly of St. John's Episcopal Church. It was a Church of England service and is reported to have been impressive. His remains were interred at Mountain View Cemetery. The pallbearers were McKinstry and Myrick from the Supreme Court and a number of his close personal friends. He "was a believer in the religion of Jesus Christ," and "passed away in the hope and faith of a Christian."¹⁷

McKee left surviving him his wife, Sarah Ann Davis McKee, whom he had married in 1858, sister of his first wife, who died in 1855. He had three children by his first wife Martha, namely, Robert Livingston, Annie Bell, and Edward Davis, all born in the South. He had seven children by his wife Sarah Ann, namely, Samuel Bell, Jr., Martha, James Cain, Sally Banks, Nellie Adelaide, Amy Marguerite, and Alma. All but Martha and Alma survived him. His daughter Annie alone was married at the time, her husband being John B. Mhoon, a well known attorney of that time. McKee's sons Robert and Edward had gone to Portland to live, and his son James C. was employed by the Union National Bank in Oakland.

McKee left no will, and no great estate to be administered through court. It would appear he had attended to his temporal matters before death overtook him.

All references to McKee bear witness of his superior personal qualities. He was a more than usually attractive and winsome personality. Speaking of this side Thornton mentioned in the memorial exercises

SAMUEL BELL MCKEE
Thirty-First Justice

in the Supreme Court that he possessed "what Clarendon said the great John Hampden had, 'a flowing courtesy,'" He was a gifted public speaker and with his excellent memory drew effectively from his wide knowledge of history and literature. With his abundance of kinky reddish-auburn hair, which he at times permitted to grow to a length which almost made ringlets, trim figure, expressive countenance, his was an imposing and striking presence. He was of medium stature. Probably his greatest handicap was his health, which was far from robust the last fifteen-twenty years of his life, requiring careful husbanding of his energies.

All reports indicate that McKee found great satisfaction and happiness in his family circle. This can well be believed, his large family of sons and daughters turning out well and taking the honored places in the community in the manner which they did.

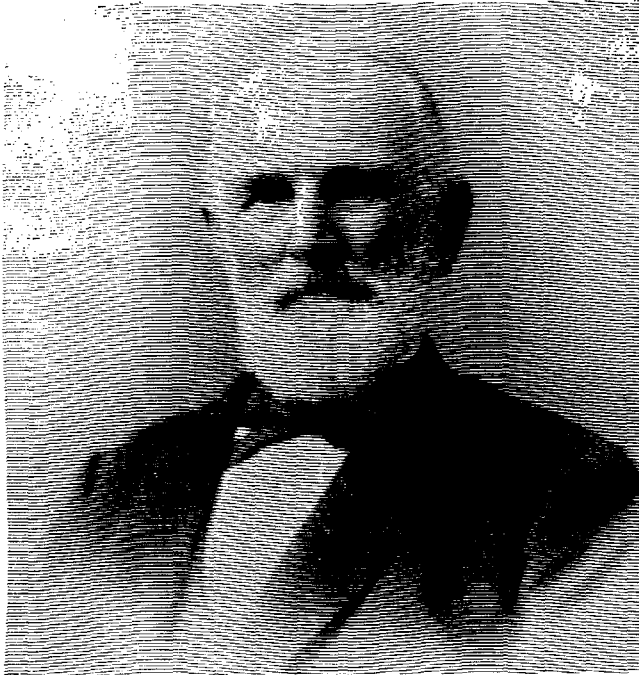
While some of the important details of McKee's life, like the names of his parents, exact date of his birth, the town or towns he lived in in Panola County, Mississippi, etc., are missing, it nevertheless is not hard to reconstruct his life in the essentials. The first half thereof was spent in preparing himself for high responsibilities and winning his way to recognition. The last half he was continuously a judge. Who will

say a man who enriched his mind with the best learning, reared the good family in the comfortable circumstances which he did, commanded the respect he did by all who knew him, and accorded his life to hope of a life hereafter in the manner which he did, was not successful in every sense of the word!

FOOTNOTES

1. Designated thirty-first man to come to the Court to make the chronology regular, as six new men came to the Court at the same time.
2. *S. F. Examiner* (March 4, 1887), 2. col. 4.
3. Letter from grandson, Norman Lang, Vancouver, B. C., to writer dated August 26, 1957.
4. *S. F. Examiner* (March 4, 1887).
5. *Ibid.*; also 68 Cal. 657.
6. Letter to writer from M. E. Stovall, assistant to the president, Oglethorpe University, dated November 9, 1936.
7. *Record Union* (March 4, 1887), 2, col. 3.
8. *Ibid.*
9. 68 Cal. 657.
10. Letter dated November 15, 1854.
11. *Life, Diary, and Letters of Oscar Lovell Shafter*, p. 141.
12. Halley, *Centennial Book of Alameda County*, p. 535.
13. *Examiner* (March 4, 1887).
14. Shuck, *A History of the Bench and Bar of California* (1901), p. 1128.
15. P. 536.
16. See generally *Political Conventions*, Davis.
17. 68 Cal. 660.

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Milton Hills Myrick

The most distinctive feature of Milton Hills Myrick's professional career, and the thing which most insures his permanent fame, is the fact that he was the probate judge in San Francisco for eight years, during which time he rendered a body of decisions which were gathered together as his service on the Court was drawing to a close and published under the title of *Myrick's Probate Reports*. Whenever California probate law is discussed to any degree his name is almost sure to come in. While his work on the Supreme Court has greater official authority, there nevertheless can be no question about the wider influence of his probate rulings.

Milton Hills Myrick was born on a farm near Paris Hill, Oneida County, New York, May 28, 1826. His mother's maiden name was Hills. His father was Luther Myrick. On his father's side he descended from Ensign William Myrick, who settled in Eastham, Cape Cod, Massachusetts, in 1646. Ensign Myrick had the distinction of serving six years under Miles Standish.

Myrick's father was a country preacher, who divided his time between preaching, agriculture, country journalism, and helping out in sundry reform

movements. The latter included membership in the New York Anti-slavery Society which met at Utica in 1835. He preached successively in Manlius, Oswego, and Cazenovia, then all small New York communities.

Myrick was initiated into the printer's trade helping his father get out the weekly paper which he published in Oswego. When the family moved to Cazenovia, Myrick worked there as a printer. He also became a student at Cazenovia Seminary, a Methodist school. In passing it may be mentioned that Leland Stanford graduated from this institution in 1845.²

In May, 1843, the family moved on to a farm in Jackson County, Michigan. Here Myrick's father passed away the following September. Myrick thereafter followed the printer's trade a number of years in Jackson, Michigan; Syracuse and Albany, New York; and in the government printing offices in Washington, D. C.

From Washington Myrick returned to Jackson, where he became a deputy county clerk, serving as a deputy supreme court clerk when the Supreme Court of Michigan held its sessions there. It was at this time that he took up the study of the law, studying in the office of Frink & Blair. Austin Blair of this firm was Governor of Michigan through the Civil War.

Myrick was admitted to the bar by the Supreme Court of Michigan in July, 1850. The following summer he acted as an amanuensis for William H. Seward in a case he was trying in Detroit, taking down the testimony during the day and writing it up in the evenings.

Myrick came to California by way of Nicaragua in 1854. From Nicaragua he came to San Francisco on the ship *Sierra Nevada*, arriving in October. He found the city full of lawyers and the outlook for getting started discouraging. With only a few dollars left, he fell back on his trade and worked as a printer in San Francisco the following year. In 1855 he went to Shasta, then a prosperous mining town, where with J. C. Hinckley, he had a hand in establishing the *Shasta Republican*. He remained in Shasta until May, 1857, when he went to Red Bluff and "resumed practice"³ in association with Warner Earll, later a justice of the Supreme Court of Nevada (1875). He remained in Red Bluff until May, 1866, when he came to San Francisco and took up the practice. For all

MILTON H. MYRICK

Thirty-Second Justice, January, 1880 - January, 1887¹

that appears, he practiced alone until 1871, when he became associated with E. D. Sawyer, the association becoming known as Sawyer & Myrick.

Myrick's great opportunity in the law came when he was appointed a referee by O. C. Pratt, judge of the twelfth judicial district, to take testimony in what was referred to as the Buri-Buri partition suit, involving a great deal of land in San Francisco and San Mateo Counties. It has been said that the favorable impression he made on the lawyers who came before him was a material factor in his becoming the probate judge in San Francisco. He was nominated for this position in 1871 by the Taxpayers' convention, and elected, succeeding Seldon S. Wright. The probate court, as a distinctive court in San Francisco, was created by a statute in 1863, as authorized by a constitutional amendment of 1862. Myrick presided over this court two terms, from January, 1872, to January, 1880. He spoke of this branch of the law as "one of the most satisfactory, if not always the most exciting department of civil jurisprudence."⁴ It became his considered view that compromises between parties claiming interests in estates of deceased people were greatly to be favored over court contests.

The respect Myrick had won with the profession by the time he was elected to the Supreme Court was evidenced in his court by a testimonial on the part of the bar. He was praised for his uniform fairness.

Myrick was the only Republican elected to the 1879 Court, the other six being candidates of the Democratic and Workingmen's Parties. With McKee, he drew a seven-year term, which he served out. It does not appear that Myrick had been active in politics before this, at least not on a statewide basis. In this respect his record is in contrast to that of many of the early day justices. He received the lowest vote of the seven elected and did no more than squeeze through. He did not seek re-election as his term came to an end in 1886.

Upon retiring from the Court, Myrick became associated in the practice with Frank P. Deering in San Francisco. In 1905, L. A. Gibbons joined them. A great deal of the practice of their firm came from the favorable impression Myrick had made upon the community as a probate judge, and in a large degree related to probate matters.⁵

About the time Myrick retired from the Court, he moved to Campbell, in the beautiful Santa Clara Valley, where he addressed himself to his eighty-acre orchard project acquired in 1881. He took an active part in the community affairs of Campbell, and became well and favorably known. He helped found the Campbell Library, operated by the County Women's Club until it was taken over and became part of the county library system. He donated a great many books and for some years there was a special shelf in the library which was known as the Myrick shelf. When the people of Campbell inaugurated "Old Settlers Day" in 1895, while Myrick was not one of the original settlers, he nevertheless had a part on the program as one of the speakers.

Myrick was married three times, his last to Emma A. Simpson, a semi-invalid. They chose to go about it quietly and their friends heard about it first when they read about it in the papers. When Myrick's friend, George W. Beaver, heard about it, he dispatched a wire to Tahoe, assuring them that if they would return at once "all will be forgiven."⁶

Myrick died in Campbell September 18, 1907. He left surviving him, his wife, Emma A., and a son, George T., the latter at that time a resident of Santa Rosa. The burial took place at Santa Clara City Cemetery. His wife survived him a short time only, passing away at Pacific Grove June 9, 1908. He left no will. Apparently he had distributed his estate before he died. He gave his Campbell ranch to Ione Dille, who later married Major Reginald Heber Kelley. She and her mother lived at the Myrick Campbell ranch.

Myrick was a prominent and active Mason all his mature life, becoming a member of the order in Michigan in 1849. Through the years he held important offices in the lodges at Shasta, Red Bluff, and San Francisco. In 1891 he was Grand High Priest of the Royal Arch Masons of California.⁷ He enjoyed his fraternal activities and gave it as his view that no one in California had a "greater cause than he for gratitude for the friendships of the order."⁸

Myrick was a medium-sized man, possibly five feet nine inches tall, of average weight, and medium dark complexion. He was fond of outdoor life and activities which involved cultivation of the soil.

THE CALIFORNIA JUSTICES

Professionally, Myrick was the essence of punctiliousness. One time an individual asked him to give his best figure for handling a sizeable estate. "I never bid for professional employment" was his quiet reply.⁹

Another time a young lady came to his office. After advising her professionally, he mentioned that he thought she was using too much "make-up" and suggested she refrain therefrom, as it was "not nice."

The careers of a number of the justices of the Supreme Court of California have been diverse. Myrick in a degree shares this distinction.

FOOTNOTES

1. Designated thirty-second to make the chronology regular. The writer has drawn heavily on Oscar T. Shuck's

sketch in his *History of Bench and Bar of California*, 1901 edition. Shuck stated he had known Myrick thirty-five years and gives sufficient detail to bear this out. A short time before he died Myrick gave his handsomely bound copy of this book containing his signature at the front, to George L. Beaver, and the latter's son of the same name now living in Berkeley possesses it, together with some other books from Myrick's library.

2. Oscar Lewis, *Big Four* (1938), p. 162.

3. Footnote 1, *supra*.

4. Prefactory, *Myrick's Probate Reports*.

5. Interview with Frank P. Deering, October 11, 1938.

6. Mr. Deering.

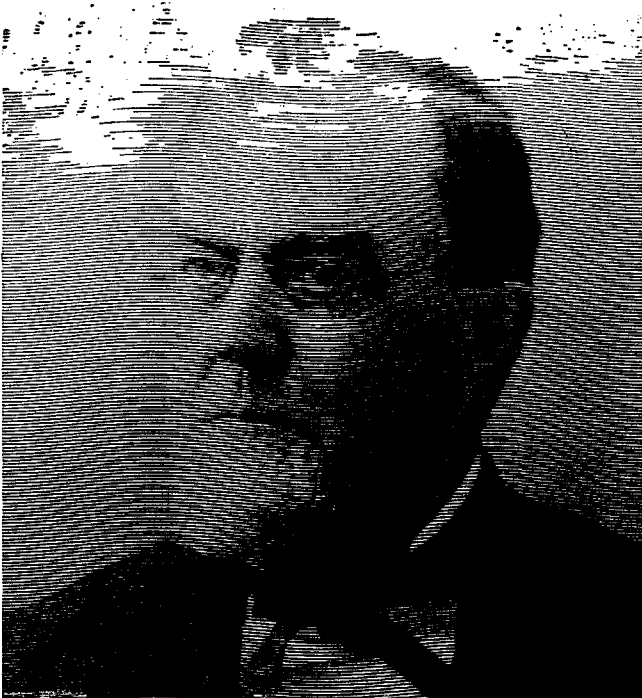
7. *Fifty Years of Masonry in California* (George Spalding & Co., 1898), Vol. II, pp. 582, 586, 603.

8. Footnote 1, *supra*.

9. Deering interview.

JAMES D. THORNTON

Thirty-Third Justice, January, 1880-January, 1891¹



James D. Thornton

James Dabney Thornton was born on his father's farm or plantation known as Oak Hill, in the post village of Ca Ira, about four miles from the City of Cumberland, Cumberland County, Virginia, January 18, 1823, and was the son of William Mynn and Elizabeth (Anderson) Thornton. On his father's side he was of English ancestry and on his mother's Scotch-Huguenot. His father was a more than usually successful farmer, planter, and merchant.

Thornton received a fine elementary education in the schools of the neighborhood where he grew up, his teachers for the most part being well educated people with fine backgrounds. It serves to emphasize how learning has intensified and expanded in America in the little over a hundred years since Thornton, a youngster of fifteen, entered the University of Virginia (1838), where at eighteen he "was duly graduated from the schools of ancient languages, modern languages, chemistry, natural philosophy, moral philosophy, and received certificates of proficiency in political economy, geology and mineralogy!"² He completed his work at the university in 1841. At the time he entered the university he gave his home address as Ca Ira.

Thornton commenced the study of the law in his home county in July, 1841, studying mostly alone, but assisted by a lawyer named H. P. Irving who later became a member of the San Francisco Bar. His study of the law was interspersed by other activities, including employment for about three years in a commission house dealing in tobacco and other farm products in Richmond. Richmond, it may be mentioned, is not a great distance from his home county.

In Thornton's young manhood the populations of the older commonwealths were overflowing in large numbers into the adjoining unsettled areas to the west. Virginia, the Carolinas, Georgia, etc., overflowed in a great degree into Alabama, Mississippi, etc. While not one of the original pioneers of Alabama he was nevertheless influenced by this drift and was for a time one of Alabama's earlier day citizens.

He went to Alabama first on a visit in 1847. This must have been to the western part of the state where Harry Inness Thornton and his family lived, as Thornton returned to Alabama the following year and married their daughter, Sarah Francis, the wedding taking place in Eutaw, Greene County, the bride's home. Harry Inness Thornton, born in Virginia, grew up in Kentucky, where he married Lucy Crittenden, a sister of John C. Crittenden, the distinguished statesman from that state. Harry Inness Thornton moved to northern Alabama (Huntsville) about 1825, and about 1840 to Eutaw, where he engaged in the practice of the law and cotton growing. He was appointed a commissioner to settle Spanish and Mexican land grant titles in California in 1851. The appointment by Millard Fillmore could have traced to his brother-in-law's high influence with the President. It is reported that Thornton and his wife were not related.³ The identity of names and Virginia as a common family background might justify a little further investigation before finally concluding.

Thornton returned to Virginia for a season after his marriage, but returned to Alabama to live in November, 1848. He was admitted to the bar there in 1849, whereupon he took up the practice in Greene and the adjoining counties of Alabama. It is not unlikely that his practice extended into the border counties of eastern Mississippi, as the lawyers of that area at that time passed freely back and forth over the state line.⁴

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Thornton's father-in-law came to California soon after his appointment as land commissioner. While Thornton was still in Alabama they agreed to take up the practice together in California. With this preparatory groundwork, the move was therefore to Thornton not the uncertain leap that it was to many who came at that time.

Thornton arrived in San Francisco June 14, 1854. As he had left Alabama by way of New Orleans he came either by way of the Isthmus or the Nicaragua route. As planned, he became associated in the practice with his father-in-law and John J. Williams. When Harry I. Thornton died in 1861 his association continued with Mr. Williams.

Thornton was more or less active in politics through the years following his arrival in California to the time of the Civil War. He always lined up with the Southern Democratic school, an active and aggressive group. When news came in 1860 of the split of the Democratic Party into the Douglas and Breckinridge factions, Thornton joined in a lengthy address published in the *San Francisco Herald* giving their reasons for supporting Breckinridge.⁵ While Thornton was not the extremist many were, he nevertheless was strong in his Southern convictions. In 1862 he was a member of the state committee of this branch of the Democratic Party.⁶ During the war he refused for upwards of two years to take the so-called "Ironclad Oath," required to practice in the state courts.⁷ While he did not die as hard as some of his friends, he nevertheless suffered much by reason of his convictions. That these were exceedingly trying times for Thornton is clear when note is also taken of how the war decimated his father's family. Three of his brothers are reported to have lost their lives in the service of the Confederacy.⁸ Thornton accepted without reservation the order of things which the war established, and is known to have felt a pride in the fact that two sons-in-law, Admirals Watson and Glass, and two grandsons, Lieutenants James Thornton Watson and Edward Howe Watson participated in the war with Spain.⁹

While Thornton did not figure in politics for some time after the war, as time went by he came to participate therein again, and once more came to attain considerable standing in this department. That he was rating in 1878 is evident from the fact that he was appointed by Governor Irwin judge of the newly created third judicial district in San Francisco, and

a little later becoming one of the candidates for the Supreme Court.

Thornton was serving as district judge when he became one of the nominees of the Democratic, Workingmen's (Dennis Kearney's Party), and the Prohibition Parties for the Supreme Court. His popularity is evidenced by the fact that he received the highest vote after McKinstry. His oath of office as a justice of the Supreme Court was filed with the Secretary of State November 20, 1879.

That Thornton was a man of convictions in matters pertaining to the law as well as outside thereof is borne out by his opinions. As illustrative may be mentioned his views in the bitterly contested Sharon-Sarah Althea Hill litigation.¹⁰ He was committed to regularity in matters of marriage. A few of Thornton's opinions have been selected by casebook writers of the highest scholarship.¹¹ Professor George P. Costigan includes one of his opinions in two different editions of his cases on legal ethics. While it undoubtedly is good law, one does not feel entirely satisfied with the result, whereby two lawyers got out of sharing their fee per agreement with a third party not a lawyer who had procured for them the legal business giving rise to a sizeable fee. There is no hint that this was not the agreement, and the sole defense was that it was an agreement against public policy. English cases to the contra had no influence with the court.¹² Contemplating the photograph of the Court taken during the period he served one can only be impressed by the strong minded group of which he was a part.

Upon his term expiring at the end of 1890 Thornton retired from the Court. He was succeeded by Charles H. Garoutte, the first California-born man to come to the Court.

Upon leaving the Court, Thornton again took up the practice in San Francisco, continuing therein to within a short time of his death. In fact some of his cases were not closed until after his death. Apparently he practiced alone. The evidence is ample that he was entrusted with considerable important business.¹³ He filed his last brief of *Hopkins v. Adams*, decided June 5, 1902, a short time before he died, 69 P. 228, involving a partition of a portion of the Sobrante grant to Juan José and Victor Castro by the Mexican government in 1841. Some 8,000 acres of the original grant of over 14,000 acres were

JAMES D. THORNTON

Thirty-Third Justice

involved. Over sixty law firms, probably adding up to considerably more than a hundred lawyers, appeared as counsel in the matter. William H. Waste, later a Chief Justice, and George H. Cabaniss, later a judge of the superior court in San Francisco, then younger lawyers, were among this array of counsel.¹⁴

While the major portion of Thornton's energies went during his lifetime into making a success in his chosen profession, there were other important calls thereon too. He and his wife became the parents of eleven children. In this there came to them all that goes with raising a large family, including sickness and death. Tying in with this may be mentioned Thornton's and his wife's more than passing interest in the church. Perhaps there is no influence outside of the home more potent in forming character in youngsters and people generally. All his life in San Francisco he was active in the Presbyterian church, and had a hand in organizing the second Presbyterian church in California.¹⁵ He was an elder in St. John's Presbyterian Church in San Francisco many years. It is known that on one occasion he delivered a paper before the San Francisco Presbytery entitled: "A Voice from the Pew to the Pulpit."¹⁶ He was for many years a trustee of San Francisco Theological Seminary and for a time its president. It is clear he made his influence felt in his church circles in a positive and active way. It has been observed that while he owned his home in San Francisco that he was nevertheless not a man of great means.¹⁷ However, it was understood at the time of his death that he had tasted considerable prosperity during his life.¹⁸ It may be concluded that Thornton's big investments lay principally in his family, and that which went with giving it the finest opportunities.

Thornton died at the Waldeck Sanatorium in San Francisco September 27, 1902, a little over twelve years after leaving the Court, in his eightieth year. All of his family with a single exception or two were at his bedside at the time. The funeral took place from his residence and was under the direction of Rev. George G. Eldridge, pastor of St. John's Presbyterian Church. The pallbearers were Chief Justice Beatty and T. B. McFarland from the Supreme Court, Erskine M. Ross from the United States Circuit Court of Appeals, and a number of close friends, some of whom had been his clients.¹⁹ His remains were interred at Laurel Hill Cemetery. He left surviving him his wife and six of the children that had

been born to him and his wife: Crittenden, William M., John Thurston, Elizabeth (wife of Rear Admiral John Crittenden Watson), Margaret (Mrs. Abbott Kinney), and Virginia Thornton. The daughter who had married Admiral Glass had predeceased Thornton. Crittenden and John followed their father in the law.

The writer has seen no description of Thornton, but from such photographs as he has seen it would appear he was somewhat stocky in build, suggesting health and vigor of body. There was definitely a look of firmness and strength of character on his face. Certain it is that he was anything but an expedientist or a temporizer. One can only think of him in terms of forcefulness and the solid qualities.

FOOTNOTES

1. Designated the thirty-third justice to make the chronology regular.

2. Shuck, *A History of the Bench and Bar of California* (1901), p. 751; and letter dated June 19, 1958, from Alderman Library, University of Virginia. The writer has drawn heavily on Shuck.

3. Shuck, *op. cit.*, p. 751.

4. The letters of Joseph G. Baldwin, the eleventh man to come to the Supreme Court of California, practicing in this part of Alabama at this time, to which the writer has had access, bear this out. He expressly mentioned Thornton a number of times.

5. Davis, *Political Conventions in California*, p. 113.

6. *Ibid.*, p. 191.

7. Stats. 1863, Ch. 365, p. 566. "An Act to exclude Traitors and Alien Enemies from the Courts of Justice in Civil Cases." Repealed Stats. 1867-1868, p. 8. *Cohen v. Wright* 22 Cal. 293; *In re Yale* 24 Cal. 241.

8. *S. F. Call* (Sept. 30, 1902), 3.

9. *Ibid.*

10. See his dissenting opinion, *Sharon v. Sharon* 75 Cal. 1, 16 P. 345.

11. Sayre, Harvard, *Cases on Criminal Law*, *Cases on Legal Ethics*, Costigan, University of California; *Cases on Water Rights*, Bingham, Stanford, etc.

12. *Alpers v. Hunt* (1890) 86 Cal. 78, 24 P. 846, 9 L.R.A. 483, 21 A.S.R. 17.

13. *S. F. Chronicle* (Sept. 30, 1902), 8; *S. F. Call* (Sept. 30, 1902), 3.

14. 69 P. 228 (not reported in state reports).

15. *S. F. Call* (Sept. 30, 1902), 3.

16. Shuck, *op. cit.*, p. 752.

17. *Ibid.*

18. "Here he acquired a reputation as a lawyer and made a fortune," *S. F. Examiner* (Sept. 28, 1902), 1.

19. For instance, Julius C. Reis, *S. F. Call* (Sept. 30, 1902), 3.

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A. Van R. Paterson

Alexander Van Rensselaer Paterson was born on a farm bordering the St. Lawrence River near Ogdensburg, New York, March 2, 1849. His father's name was James. It was here he spent his early years. From the Van Rensselaer in his name one might suspect that he was of Dutch stock. This, however, is not the case. His father, born in Edinburgh, was a Scotsman. On his mother's side he was Scotch-English. The Van Rensselaer in his name was after a well-to-do landowner whom his father served as a veterinarian.

Paterson's father had a brother who lived on the Canadian side of the St. Lawrence opposite Paterson's father's farm. They went back and forth across the river a great deal, which during the periods when not frozen over was by boat. As a boy Paterson became expert in handling boats. The physical development which came from this was marked, particularly as related to his back, shoulders, and arms, and left a permanent impress upon him as relates to tastes as well as his physique. He never outgrew his love of boats and the water. Boating was his favorite recreation the period he lived in Stockton. He was during his residence there active in a lively boating club.

Paterson received his elementary education in the common schools of his home community. Completing the same, he entered a normal school in Ogdensburg. Here he lived at least part of the time in a batching cooperative of students. After graduating he taught school a couple of years. This was a means of helping him save the money needed to attend Albany Law School in Albany, New York, from which he graduated in 1875. Soon thereafter he came to California, believing there was more opportunity in a newer community than the older ones of the east. A sister had preceded him to California, which also was not without its influence. He selected Stockton as the place to commence practice. At first the going seemed unusually difficult. He became discouraged to the degree that he decided to leave Stockton and try some other place. Before he could act in this regard friends went out of their way to procure for him the city treasurership, which kept him going until 1878, when he became city attorney, winning the position over James H. Budd, later Governor of California.

In 1879 Paterson was elected judge of the superior court for San Joaquin County. It is clear from this that his rise in the law was more than usually rapid despite the early discouragements. He was only a little past thirty at the time. In 1884 he was re-elected.

Paterson married Amy Kelsey, daughter of John Milton and Angeline (Childers) Kelsey of Stockton, May 5, 1880.

Three vacancies were occurring on the Supreme Court of California in 1886. Two twelve-year terms and Ross' unexpired term were to be filled. The Republicans nominated Paterson and Thomas W. McFarland for the long terms, Paterson receiving his nomination on the first ballot.² In the election that followed Paterson and McFarland won, and Jackson Temple, Democrat, was elected for Ross' unexpired term.

While Paterson and Temple belonged to different political parties, and Temple a somewhat partisan Democrat, they were nevertheless the best of friends. They saw each other more or less frequently while campaigning for office and compared notes. Temple told Paterson with confidence that he, Temple, would be elected by a majority of more than twenty thousand, which must have sounded like big talk. Temple

A. VAN R. PATERSON

Thirty-Fourth Justice, January, 1887 - April, 1894¹

received the highest vote of anyone in the entire election. A day or two after the election Paterson wrote Temple in part:

Now who has been pelted with "sugar plums," and sweet ones at that?

You ought to be ashamed of yourself for insisting on over 20,000 majority . . .

There is only one thing now that I want you to do for me and if you will do it I shall forgive all—even your reference to Lincoln's favorite *pome*—viz: if I get a certificate of election I want to be assigned to Dept. 1 with McKinstry, J. and yourself, and I want you to help me get there. Will you do it? . . .³

Paterson realized his wish in this regard.

Paterson became part of a strong Court and fully

kept up his end of the work and the high standard of the Court. The representation of his opinions that have found their way into the leading casebooks of the country is impressive. Had he remained on the Court the length of time which some of the men did who developed into the few very top men in this regard, he might well have been numbered as one of them. However, he resigned from the Court April 25, 1894, after a service of a little over seven years. Financial considerations are said to have been the principal reason. William C. Van Fleet was appointed in his place.

Upon leaving the Court Paterson took up the practice in San Francisco, becoming associated with Arthur Rodgers who has been spoken of as "one of



Supreme Court of California about 1888

Front, left to right: Temple, McKinstry, Searls, Thornton Rear, left to right: Paterson, McFarland, Sharpstein

Photo furnished by May S. Heuer

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the most scholarly members of the San Francisco bar" of his day,⁴ the association becoming known as Rodgers and Paterson. In 1898 Charles W. Slack became a member of this association. The reputation of Rodgers, Paterson & Slack, with their offices in the Wells Fargo Building, is something the few remaining old timers refer to as much as sixty years later.⁵

Paterson acted as attorney in a number of celebrated cases. In the Fair case he represented certain minor heirs. He was attorney for Clara Kluge Sutro in the contest involving Adolph Sutro's will, and represented an Indian woman by the name of Lucy Hite in a suit against the estate of John R. Hite. The latter had married a white woman after marrying this Indian lady without being divorced.⁶

Paterson was mentioned for the United States Senate in 1899. Apparently he and his political friends did all that could reasonably be done to further his chances, but men who had priority for the consideration of the party held their own.

Paterson died at his home at 1926 Octavia Street, San Francisco, July 27, 1902, only a little past fifty-three years of age. His death in the press ascribed the cause as "liver complaint."⁷ While he had been poorly for some months, his death was unexpected. He left surviving him his wife, two daughters, Kelsey and Marjorie, and a son, the latter a babe of a year. The funeral services took place at the Odd Fellows Cemetery in San Francisco. His remains were cremated and the ashes interred in the Kelsey family plot in the Rural Cemetery in Stockton.

Paterson affiliated with the Congregationalists. He also showed partiality for the Presbyterian church, and expressed high respect for the Catholics.

Paterson was of average size, somewhat robust of build, but standing alongside some of his more sizeable colleagues of the Court, like McFarland, Sharpstein, McKinstry, etc., he seemed almost small of stature. He walked with his chest out and head up, suggesting self-confidence. Of complexion he was fair, with blue eyes. While on the Court he combed his hair pompadour, and wore a becoming mustache. He passed for a good looking man, and possessed a fine sense of humor.

Several things evince Paterson's human side. It is reported that he visited some of the state mental institutions as he could, both while a judge of the superior court and later as a justice of the Supreme Court, for the purpose of gathering first hand impressions as relates to the treatment of the patients. He extended a helping hand to young men who were taking the bar examination, and for a number of years coached and otherwise helped out in this regard. As the highlights of the life of Charles S. Cushing, one of California's first lawyers, were briefly reviewed in the press at the time of his death in 1946 mention was made of the fact that he was examined for admission to the bar before Van R. Paterson.⁸ As Cushing himself had kept this fact alive, it may be accepted that there was something about the way Paterson treated him on this occasion which inspired his pleasant remembrance of an event which sometimes proves one of the gruelling experiences of a lifetime.

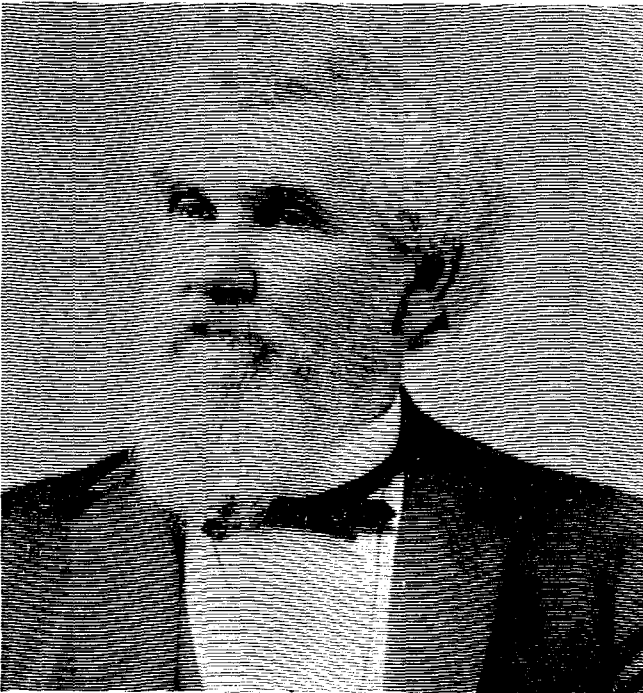
Paterson's wife never remarried and lived her last dozen or so years in Carmel, where she maintained a beautiful family-sized home. The writer called on her there in 1937, and found her an intelligent, refined, fine appearing lady, who was hesitant about discussing with a stranger what might lead into those family matters which all people regard as sacred to themselves. She died in January, 1942, with the funeral taking place in Stockton. The interment took place near the spot where the ashes of her husband had been deposited.

FOOTNOTES

1. So designated to make the chronology regular. He and McFarland came to the Court together.
2. Davis, *Political Conventions in California*, p. 517.
3. Letter in Paterson's handwriting dated November 17, 1886, in possession of the writer.
4. *S. F. Chronicle* (July 29, 1902), 3.
5. Speaking recently (August, 1960) of the greats of his first year at the bar, Sidney M. Ehrman mentioned this firm in a conversation with the writer.
6. *S. F. Chronicle* (July 29, 1902), 3.
7. *Ibid.*
8. *The Recorder* (Jan. 9, 1946).

THOMAS B. MCFARLAND

Thirty-Fifth Justice, January, 1887 - September, 1908¹



Thomas Bard McFarland

McFarland was one of the three or four strongest judges the Supreme Court of California has had judging by the representation of his opinions which have been incorporated into the casebooks prepared over the years by the scholars for use of students in the study of the law. In this regard he is in the class of Field, Shaw, and Henshaw.

Most of McFarland's working life was spent in the public service, the greater part of it, but not all, in the judicial department. His time at the bar came in a number of some short intervals. He addressed himself somewhat consistently to politics a great part of his career and at times commanded a high standing in this department. Sometimes it is supposed that political activity is more or less inconsistent with the most solid attainments in the law, the law being the special, technical, exacting, and complex field of learning which it is, while politics often is an orgy in prejudice, half truths, a species of blackmail (mudslinging), uncouthness, etc., where about anything that can hurt goes. While this may be a more or less correct generalization, it does not necessarily always have to be so as is shown by McFarland's career.

Up to the time McFarland left the state of his birth as a young man, his preparation for life was of the usual standard run of his day, unless it should be said that it was a little above standard, as he had the advantage of college training.

Thomas Bard McFarland was born upon the "homestead of his family, near Mercersburg,"² Franklin County, Pennsylvania, April 19, 1828, and was the son of John and Eliza (Parker) McFarland. He graduated from what was known as Marshall College in 1846. That this was an institution regarded as of college grade would appear from his later reference to his attendance there as "college days."³ After graduation he took up the study of the law in the office of his cousin, Robert Bard, of Chambersburg, the county seat of Franklin County. Mr. Bard has been spoken of as a lawyer of high attainments. Thomas Bard, United States Senator from California from 1899 to 1905, was related to him. McFarland was admitted to the bar in Pennsylvania by Jeremiah S. Black in 1849. Judge Black was apparently at the time judge of the circuit which included Franklin County; however, he became Chief Justice of Pennsylvania later.

For all that appears McFarland never practiced in Pennsylvania, but immediately after his admission came overland to California, arriving in 1850. He was then only twenty-two, unmarried, and in truth one of the many "young men" who came to California at that time.

He did not take up the practice upon first coming, but followed for a period of some three years the calling of a common miner. A number of the men who came to California at this time and later became justices mined for gold for a season, but McFarland lasted longer at this occupation than all the others put together.

McFarland commenced practice in Nevada City the winter of 1853-1854. Soon thereafter he became associated with Addison C. Niles, who came to Nevada City shortly thereafter. That they were not too rushed with business this first year or two, and proof that young lawyers often do other things than only strictly legal work, would appear from the fact that it did not overtax their energies to assume the editorial duties of the *Nevada Journal* published weekly in Nevada City while its publisher, Edwin G. Waite, served a session in the Legislature. However,

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"The duties of editorship were not very arduous,"⁴ observed McFarland years later, leaving time for such law work as came to them. Both McFarland and Niles possessed gifts in a literary way and their tastes in this department made the task a pleasant one.

As relates to McFarland's political activities, he was a Whig his first years and until that party broke up. With the Know Nothing wave that swept over the country in 1855 he became a Know Nothing. Later he joined the Union Party and with its evolution ended up a staunch Republican. He was elected to the Assembly on the American or Know Nothing ticket in 1855 and served in the seventh session of the Legislature, commencing in January, 1856.

In 1858 he was elected the judge of the fourteenth judicial district, comprising the counties of Nevada, Sierra, and Plumas, pushing Niles Searls off this bench. The salary was five thousand dollars a year. This judicial district was reorganized in 1863 to comprise Nevada and Placer Counties. McFarland continued to serve until 1870, when he moved to Sacramento. Here he practiced a couple of years and in 1872 was appointed registrar of the United States Land Office, in which capacity he served until 1878. This position traced to his close association and friendship with United States Senator Aaron A. Sargent.

As relates to McFarland's party activities during this period and following, he was a candidate for temporary chairman in the Bidwell faction of the Union Party in 1867 but did not win, the Gorham faction's man winning out by a vote of 141 to 139. McFarland was elected temporary, and later, the permanent chairman of the Republican state convention in 1869. In 1872 he was one of the vice presidents and in 1873 a member of the Republican judicial convention. In 1880 he was a member of the resolutions committee of the Republican state convention.

In 1878 he was elected a member of the constitutional convention of 1878-1879 and took an active part in opposing all efforts to have the proposed new constitution passed. He spoke of the constitution of 1849 as "a pretty good instrument"⁵ which probably needed some amending, but saw no occasion for a new one. In June, 1878, he gave his views at a public meeting in Sacramento sponsored by leaders of both the Republican and Democratic Parties. His speech was unusual in the independent spirit it gave expres-

sion to. "There seems to be an idea abroad," he observed, "that all candidates for the Constitutional Convention must be strapped to a platform, and sink or rise with it." On this point he declared that if he were elected he expected to meet many men of many views; that he proposed to exchange opinions with them, study all questions in all lights "and act in the end as his best judgment" should "dictate," "and to vote with the right," as he should see it after fully studying every point of view encountered. He declared frankly that he was not pledging himself as relates to details. He went so far as to say that if he should pledge himself "thus and so" and should later find his pledge should have been a commitment to an erroneous principle or view, that he would not hesitate to break his pledge and "do right" as he deemed right, "despite pledges . . ." "and," he continued, "he who will not do so is not fit to serve his country."⁶

In the convention, consistent with his earlier statements he opposed the adoption of many of the so-called radical provisions, and when the proposed Constitution was adopted by the convention opposed its ratification. It may well be that he helped in toning down to some degree some of the so-called radical provisions, but the fact remains that he was numbered with the school which was in a large degree overruled. It may be interesting to note that many of the dire results predicted if many of the innovations should be adopted have not come to pass. It may be that the issues were not so much as relates to the form of government, as McFarland argued, as it was a contest between groups for control of the government, or for greater participation therein.

After about four years at the bar he was appointed by Governor Perkins in 1882 a judge of the superior court in Sacramento, which position he held until elected a justice of the Supreme Court of California in 1886. Upon becoming a member of the Supreme Court he moved to San Francisco, which became his home the rest of his life.

McFarland served on the Court twenty-two years lacking a few months, being associated the while with twenty-one different men as justices.

Mention has already been made of the representation of McFarland's opinions in the casebooks. The casebooks in which his cases find representation commence with the early masters of the casebook

THOMAS B. MCFARLAND

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system, like Thayer, Jeremiah Smith, Ames, Beale, and on down to more recent compilers, some of them as distinguished as those just mentioned. In a number of instances a goodly number of his opinions appear in a single casebook. His water law opinions run into numbers. These opinions come out of a large number of the California reports.

McFarland was married to Susan Briggs in 1858, a native of New York, at the time living in Nevada City. They had an only daughter, Jennie H., who never married.

One of the finest honors that came to McFarland was his selection as one of the original trustees of Stanford University in 1885. He served continuously in this position to the time of his death.

McFarland died in San Francisco September 15, 1908, leaving his wife and daughter to survive him. The funeral services were under the direction of George C. Adams of the First Congregational Church in San Francisco. "As in his everyday life, where simplicity held sway over ostentation, the funeral ceremonies were plain and impressive, while strong men wept and pioneers who numbered the eminent jurist among their closest friends were greatly affected."⁷ The pallbearers were his last associates of the Court, Van Fleet from the federal courts, Judge John Hunt, and a number of prominent laymen and lawyers, and included David Starr Jordan and Peter F. Dunne. His remains were interred in the Odd Fellows Cemetery in San Francisco.

Physically, McFarland was a large man, "Tall, strong and robust," with a "hearty, rough-and-ready manner." He was the hail fellow well met, warm-hearted, and friendly in a high degree. In social intercourse he was informal in his ways and manners. During a great part of his later life he wore a great beard and allowed his hair to grow into long wavy locks.

McFarland liked to play cards if players were skilled and addressed themselves to the business in hand. He did not always conceal his contempt for poor playing. "He even cussed the ladies,"⁸ and was known to unceremoniously leave the table when the playing persisted below his standards. His sense of humor may be illustrated by a story the writer heard Dean Orrin K. McMurray tell referring to the criti-

cism some of the San Francisco papers were making of the justices by reason of their daily playing "pinocle" after luncheon at the restaurant in San Francisco where they ate. McFarland was indignant and incensed at the accusation and would have all know they never played pinocle. It was poker! Off the bench it was not uncommon for him to chew tobacco and smoke a cigar simultaneously. His literary gifts found expression in his speeches as well as writings. Shuck mentioned a speech he made on one occasion before the Howard Club of San Francisco relating to "Reminiscences of College Days" which was pronounced a masterpiece and printed for private circulation.⁹

McFarland transferred all his property to his wife and daughter before his death. His wife passed away in 1921 and his daughter in 1929. The latter's estate inventoried something over a hundred thousand dollars and probably largely traced back to her father.

McFarland was very happy in his home life. His wife and daughter showered a world of affection and solicitude on the towering and rugged old man which he became. When the infirmities of age set in and he could scarcely get around, and at the last, when confined to his bed, he bore his sufferings without complaint, and if he had nothing else to say, nevertheless did not omit to express appreciation to those who ministered to him.

He did not relax his labors on the Court except as loss of strength and sickness forced it. From the way he gave his mind to his judicial duties to the very last it is apparent that he was not giving much thought to quitting until death itself should release him.

FOOTNOTES

1. McFarland and Paterson came to the Court together. Paterson, leaving the Court first, has been set out as coming to the Court first to make the chronology regular.

2. 154 Cal. 807.

3. *History of the Bench and Bar of California* (1901),

3. Shuck, *History of the Bench and Bar of California* (1901), p. 662.

4. 62 Cal. 661.

5. *Sacramento Record-Union* (June 10, 1878), 4.

6. *Ibid.*

7. 154 Cal. 807.

8. Conversation with Richard Belcher, Marysville, 1938.

9. Shuck, *op. cit.*, p. 662. The writer has not seen a copy if any exists.

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Niles Searls

Niles Searls was born December 22, 1825, in the town of Coeymans on the Hudson a short distance from the City of Albany, New York, and was the second of Abram and Lydia (Niles) Searls' eight children. Searls' father was born on the same farm as Searls, and his mother in the same township. Her family were Quakers and originally came from Dutchess County, New York. Searls' grandfather, Abraham Searls, was born in Westchester County and the latter's father, it was reported to Searls, came from Devonshire, England.

When Searls was twelve his father moved with his family to Wellington, Canada, located on the north shore of Lake Ontario. Searls received the rudiments of his education in Coeymans and Wellington.

When Searls was seventeen he returned to New York and entered Rensselaerville Academy at Rensselaerville, located in the county of his birth, attending a number of years. It was while he lived in Rensselaerville that he fell in love with his cousin, Mary C. Niles, who later became his wife. Upon completing

his work at the academy he studied law in the office of O. H. Chittenden in Rensselaerville for upwards of two years. He then went to Cherry Valley, some fifty miles northwest of Rensselaerville in Otsego County, and studied in what he called Fowler Law School, graduating in the spring of 1848. He states that he was admitted to practice on May 2 of that year.¹

Upon graduating, Searls returned for a visit to his home in Wellington. He was at that time unsettled as to where to take up the practice. Soon thereafter he travelled through Ohio, Kentucky, Indiana, Illinois, stopping in Harrisonville, the county seat of Van Buren County (later changed to Cass County), Missouri, located some thirty or forty miles south of Kansas City, where he commenced practice. That he did not get into business a great deal would appear from his statement that he "kept a law office a short time, but the law office did not keep" him.²

By the fall of 1848 there was great excitement in western Missouri, as elsewhere, in connection with the discovery of gold in California. Searls states that "about half the people" of that area took steps to cross the plains "the next year."³

Searls and a friend by the name of Charles W. Mulford came overland together by way of Allen and Turner's "Pioneer Line," leaving Independence May 9, 1849, and arriving in Sacramento October 14. It had taken 105 days to make the journey. Searls kept a detailed diary the greater part of this journey and from it one may gather how severe and arduous it was. He estimated that at least twenty-five per cent of the hundred and twenty who started with him from Independence died on the way. Most of them died from cholera. While he enjoyed good health most of the way, before reaching California he took sick himself and became very weak. He referred to his ailment as scurvy.

After recuperating in Sacramento he went to the South Fork of the American River three miles above Mormon Island and mined a month or six weeks, when illness forced him to return to Sutter's Fort, where he remained in a hospital maintained by the Odd Fellows, about a month. Upon recovering, he and his friend Mulford engaged in a potato and onion business in Sacramento until about March, 1850. In connection therewith Mulford went to San Francisco and procured the produce and supplies, while Searls sold them on the levee. Thereafter Searls went to

NILES SEARLS

Thirty-Sixth Justice, April, 1887 - January, 1889

Fourteenth Chief Justice

Marysville where he engaged in mining at Long Bar on the Feather River, meeting with some success. About June 1, 1850, he and Mulford engaged in a two-mule express business between San Francisco and Downieville. Mulford operated between San Francisco and Marysville, and Searls between Marysville and Downieville.

On September 1, 1850, nearly a year after arriving in California, Searls went to Nevada City and commenced the practice of the law. At first he used as an office a part of the building in which his friend Mulford was starting a book and stationary business, using "a pork barrel for a desk and a nail keg for a seat." He states there was not a chair or a desk to be had in Nevada City at that time. "The big fire of March 1851," using Searls' own words, destroyed this building.⁴ Searls was in Oregon at the moment.

Searls returned east in 1851 for a short visit. He was elected district attorney for Nevada County the following year, 1852. In 1853 he went east again and was married May 25 to Mary Corinthia Niles. He returned to Nevada City by way of the Isthmus, accompanied by his little wife (weight, ninety-one and a half pounds on her arrival in Nevada City, in October, 1853).⁵ The voyage by ship (except for the land journey across the Isthmus) even with the little hardships, was in delightful contrast to Searls' first trip across the plains. Writing home while en route to California Searls' wife observed in one of her letters: "Niles and Charlie (Mrs. Searls' brother) are about as happy as ever you saw two men . . ."⁶

Upon Searls' return to Nevada City, he became associated with William M. Stewart, later a colorful and picturesque figure of the Comstock Lode and a United States Senator from Nevada. Stewart had been associated with John R. McConnell, who had shortly before been elected Attorney General of California, making an opening for Searls.

The latter part of December, 1853, Searls took over the editorial duties of *Young America*, a Democratic Party paper founded by William M. Stewart, in connection with which he received one hundred dollars a month.⁷

Searls' ascent to prominence and influence in California was gradual. There was nothing spectacular about it. Also, it was years before he became entirely oriented and satisfied with his profession and life in California. After living in Nevada City for upwards

of a year, writing to her brother Addison, Mrs. Searls told of the hard going they were having, expressed doubt if Searls would succeed, and advised him not to come to California, much as he had his heart set thereon. Adding to their discouragement at this time was the loss of Searls' law books in a shipwreck off San Francisco Bay.⁸ The loss of these books represented a value of about \$1,000.

Two sons were born to Searls and his wife in Nevada City, Fred and Niles, each growing to maturity and founding distinguished families of their own.

While Searls had gone ahead in the law in Nevada City, first being elected district attorney for Nevada County, and later district judge for the fourteenth judicial district (1855), it is clear from the fact that he sent his family back to Rensselaerville in 1863 and he himself followed in 1864, following his defeat by Thomas B. McFarland for the district judgeship, that he was still entertaining some reservations as relates to California, and possibly the law as a means of a livelihood. Returning to New York, he engaged in farming the next five years.

Searls came back to California in 1869 and picked up the practice where he had left off. Returning this time was like coming back home. He never had misgivings any more as to where he wanted to live, or what he wanted to do, and made his greatest showing after this.

Searls had addressed himself to politics from the time he first came to Nevada City. He continued to do so upon his return in 1869 and as the years went by became a man of influence and power in the Democratic Party, serving on important convention committees, like those on platform,⁹ and resolutions,¹⁰ etc.; as a member of the state central committee;¹¹ convention vice president,¹² etc. He was elected a delegate to the Democratic national convention which met in Chicago in 1884,¹³ and was a runner-up for a place on the Supreme Court in the San Francisco convention of 1886.¹⁴ Searls' political activities throwing him in close association over the years with the leaders of the state, he came to know them on a wide scale.

While Searls was a dyed-in-the-wool Democrat, he was not so partisan that he did not entertain admiration for Lincoln. He had an appointment for 10 o'clock in the morning of the day after Lincoln was killed to see him in the White House. Senator

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Stewart stated that Lincoln's note to him fixing the time of this appointment was the last thing Lincoln wrote.¹⁵

In 1885 the Legislature passed an act providing for the appointment of three Supreme Court commissioners to assist the Court in its work. These Commissioners were for all intents and purposes three additional judges, receiving the same salary as the associate justices. Isaac S. Belcher, Searls, and H. S. Foote were appointed.

Searls was serving as a commissioner when Chief Justice Robert F. Morrison died in March, 1887. In April, Governor Bartlett appointed Searls Chief Justice. Searls was nominated by the Democrats to succeed himself in the state convention held in Los Angeles in May, 1888.¹⁶ His uphill task to win election commenced in his own party, where Jeremiah F. Sullivan was one of the strong contenders for the nomination. In the election William H. Beatty, the Republican candidate, was elected, defeating Searls by a slight margin.

Upon leaving the Court in January, 1889, Searls returned to Nevada City where he resumed practice. He was again appointed a commissioner for the Court in 1894, serving in this position until 1898 when he retired permanently from the Court.

Searls' work on the Court was of a high order. As Chief Justice he has been spoken of as one of the best administrators which the Court had had up to that time.¹⁷ A goodly representation of his opinions as a commissioner and Chief Justice have been selected by casebook writers as correct statements of the true rules.

Throughout his law practice Searls was largely concerned with mining law, as would be natural for an attorney in Nevada City. In particular he was one of the leading champions of the hydraulic miners in their long and losing battle with the farmers and the forces of navigation. Hydraulic mining is mining by application of water under pressure through a nozzle against a natural bank (see California Public Resources Code, section 2603). In actual practice the nozzles were giant monitors capable of washing down whole hillsides, and their use produced huge deposits of mining debris which destroyed the navigability of the Yuba River, impaired that of the Feather, Sacramento, and other streams, and interfered materially

with agricultural operations in the valleys. Hydraulic operations were finally enjoined by the federal circuit court in the famous case of *Woodruff v. North Bloomfield Gravel Min. Co.* (1884) 18 Fed. 753. Congress in 1893 passed a statute (27 Stat. 507) creating a debris commission composed of three army officers. The commission, which still exists, was supposed to correct so far as possible the adverse conditions which hydraulic mining had caused, and to permit resumption of hydraulic mining where it could be conducted under adequate safeguards. The industry, however, has not been capable of revival. Searls was active in various phases of this controversy over a period of many years.¹⁸

Upon leaving the Court Searls made Berkeley his home, purchasing a large home on Durant Avenue near the University of California. He settled here so that his grandchildren might stay with him and his wife while attending the university. Searls was a great believer in education, both as relates to the arts and cultural lines and the technical and professional branches. He assisted his own sons to acquire fine educations and was deeply interested in the welfare of his grandchildren as they came along, several of whom lived with him while attending the university.



Mary Corinthia Niles Searls

NILES SEARLS
Thirty-Sixth Justice
Fourteenth Chief Justice

Searls died in Berkeley April 27, 1907, survived by his wife and two sons. His wife passed away in 1910. His remains were cremated and the ashes interred at Pine Grove Cemetery in Nevada City. He was a member of the Episcopal church, and was an active Mason the greater part of his life. While always approachable, he was a man of considerable dignity also. He is reported to have been generous to a fault. He possessed a fine sense of humor and took in good part pranks played by his Masonic brethren for their amusement at his expense. He left to his widow an estate of something over \$50,000.

Searls would be proud of the honored place a high representation of his descendants have made for themselves in different fields of activity. Giving full credit to natural endowments no small part of their achievements have nevertheless had a basis in good educational foundations. In this regard, one of Searls' basic philosophies runs strong and has set the tone for all of his descendants. To this day they make it their business to keep in close touch with both Rensselaerville and Nevada City, and vacations are frequently spent there by the younger members. Searls' old home in Nevada City is still a family shrine. The Searls' name, even after these years, is far from forgotten in Nevada City.

FOOTNOTES

1. *The Diary of a Pioneer and Other Papers* (Niles Searls' diary when crossing the plains to California). The writer had access to a copy in possession of May S. Heuer, granddaughter, residing in Berkeley, California.

2. *Ibid.*

3. *Ibid.*

4. *Ibid.*, p. 69.

5. *Ibid.*, p. 79.

6. *Ibid.*, p. 78.

7. *Ibid.*, p. 85.

8. *Ibid.*, pp. 86, 87.

9. Davis, *Political Conventions in California*, p. 350.

10. *Ibid.*, p. 456.

11. *Ibid.*, p. 422.

12. *Ibid.*, p. 431.

13. *Ibid.*, p. 456.

14. *Ibid.*, p. 523.

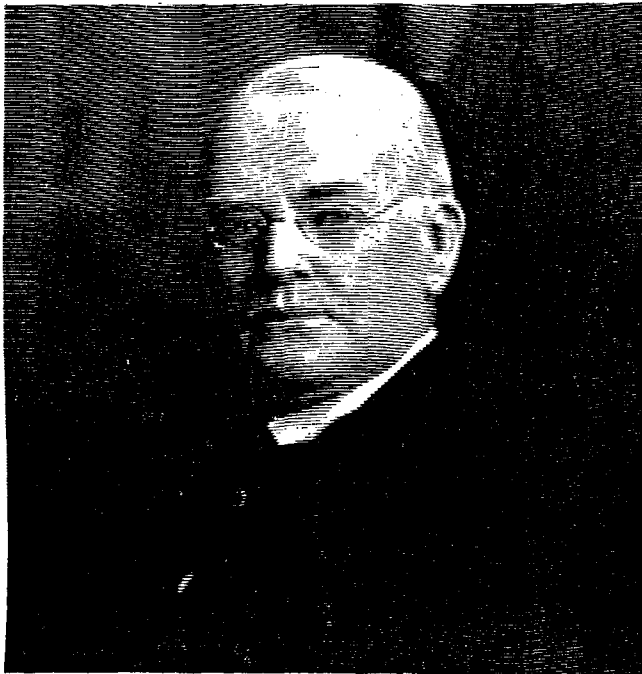
15. Newspaper clipping in possession of May S. Heuer, bearing no name or date, but from internal evidence on the matter appearing, it was some years after 1885. At the top of the clipping is written with ink "Binghamton Sunday Message" and the name of the article is "President Lincoln's murder. Sen. Stewart tells a thrilling story of the tragedy," etc.

16. Davis, *op. cit.*, p. 546.

17. Interview with Richard Belcher (1938), one time State Bar Governor, Marysville, Calif., quoting "Bancroft."

18. Hydraulic mining and the debris cases are the subject of a book entitled *Gold v. Grain* by Robert L. Kelley, University of California, Santa Barbara, published by The Arthur H. Clark Co. (1959). This book contains numerous references to Searls (pp. 153, 192, 220-221, 282).

THE CALIFORNIA JUSTICES



John D. Works

No man who has been a justice of the Supreme Court of California has had a career that stands up better on inspection than John D. Works'. It is almost unbelievable the immense amount of work and labor he did in his lifetime. His career, like those of a number of men who have been the justices, was diversified. Judicial work was only one interlude thereof. Like a number of them he had the distinction of serving in the Legislature of the state where he lived before coming to California. Also, like a number of them he was not without literary gifts, and contributed more to legal literature outside of court opinions than any man who has served on the Court. His contributions to the general literature of his day on social, moral, ethical, and religious problems were not inconsiderable. Also, like many of the men who have been justices he tasted of success in politics, and made as fine a showing in this field as in the law. He was a man of dominating personality and strong convictions. While forced to leave his native state in young manhood by reason of failing health, he nevertheless lived to celebrate his eighty-first birthday. He tasted life

in its fullness, including the joys as well as the anxieties that go with rearing a sizeable family. He lived to see his oldest son attain high distinction in the law.

John Downey Works was born on a farm near Rising Sun, Ohio County, Indiana, March 29, 1847, and was the son of James A. and Phoebe Downey Works. While his father matured into a successful lawyer, Works nevertheless in his younger years shared agricultural responsibilities with him. In a degree at least his background was that of a country boy. While most notices of his life speak of him receiving his elementary education in the common schools of Indiana, there are those, also, who mention his attending private schools.¹ He received no formal higher education.

Works was about fourteen when the Civil War broke out, and too young to enter the military service. About eighteen months before the end of the war he joined the colors, serving as a private with the Tenth Indiana Cavalry until the close of the war. His contingent was part of the army of Cumberland. He took part in the battle of Nashville, and the capture of Mobile.²

After the war he took up the study of the law under the direction of an uncle by the name of A. C. Downey. Mr. Downey later served as a justice of the Supreme Court of Indiana, and served for a time as dean of the law school at De Pauw University. He was also a circuit judge in Ohio County his earlier years.³ He had just started a law class of his own at the time Works joined him, and is said to have given a very complete course of study. Works was admitted to the bar in Indiana in 1868, and thereupon commenced the practice in association with his father in Vevay. Vevay then as now was a small agricultural community, and his practice therefore such as would be common to a farming district of this time. In his little book *Juridical Reform*, published in 1919, he mentions with satisfaction his "early experience . . . in a small town in Indiana where the shorthand reporter and the typewriter were unknown," where they tried a case "easily in one or two days," "better and more satisfactorily" than the same would be tried "under present conditions, particularly in large cities," where it "would consume a week in its trial."⁴ In passing it may be mentioned that Vevay is the birthplace of Lucien Shaw, who in due course became

JOHN D. WORKS

Thirty-Seventh Justice, October, 1888-January, 1891

one of the great judges of the Supreme Court of California. Shaw never practiced in Vevay however. It was in 1868 also that Works married, his marriage to Alice Banta taking place November 8.

While Works enjoyed a good practice, he nevertheless did not address himself exclusively to practice after he had been at the bar a few years, and in 1877 commenced his treatise on the pleading and practice of Indiana. It originally appeared in two volumes. As new editions appeared it grew to three volumes, and B. F. Watson's *Works' Indiana Pleading and Practice*, published in 1922, comprises four volumes. For many years it has been accepted as a standard work. While he did much writing after this, it is nevertheless this first effort which has given him his greatest fame as a law writer. It is said to have grown out of the notes and digests he made of the cases studied in connection with his practice.

It was in 1878 that he was elected to the Indiana Legislature, serving a term in the lower house, representing Ohio and Switzerland Counties. During his service he was a member of the judiciary committee. Looking through the journal of the House of Representatives one notes Works played a leading role in the House.

Works left Indiana in a poor state of health and came to San Diego in April, 1883. His impaired health had a basis in the way he had driven himself. He was at this time thirty-six. With a family of five young children he had many things to consider before he finally concluded to move.

In San Diego Works was soon addressing himself as vigorously to his profession as he had done in Indiana. Shuck mentions some of the important litigation he was retained in in his *History of the Bench and Bar of California*.⁵ After a short time he became city attorney for San Diego, serving in this position for a brief period.

He had lived in San Diego only three years and a half when he was appointed the judge of the superior court in October, 1886, succeeding W. T. McNealey, who had resigned. The following month he became the Republican candidate for the position. The Democrats nominating no one, he was elected without opposition. It is said that it was the strong indorsement of the bar that brought about his

appointment in the first place. He served as judge until 1888, when he resigned. While discharging the duties of this office he also found time to complete a smaller work entitled *Removal of Causes from State to Federal Courts*, which was published in 1887.

When the Republican central committee met in San Francisco May 4, 1888, and issued a call for a state convention to meet July 31, it nominated William H. Beatty for Chief Justice, and Works for an associate justice to succeed McKinstry, the latter having indicated his intention of resigning at an early date. In the convention which followed Beatty and Works were nominated for the positions mentioned, Works by acclamation. Works also became the candidate of the American Party. McKinstry resigned as of October 1, 1888.

The notices on Works uniformly stress his dislike, if not indifference to politics, in a way to leave the impression that the public offices he filled came to him without effort on his part. "One of the outstanding features of Judge Works' record of public service is the fact that all the various offices held by him came unsolicited and without effort on his part,"⁶ may be taken as illustrative. However, this should not be taken too literally. Works undoubtedly possessed a fine political instinct. When McKinstry announced his intention of leaving the Court Works desired the appointment and procured a promise from Governor Waterman to appoint him. Works was a candidate for the Court at the time McKinstry resigned, and receiving no word from the Governor reminded him of his promise.⁷ While he gave as his reason for writing that he wished to be on hand as soon as possible to help with the Court load, what the appointment would do in the matter of votes also undoubtedly had its influence. He was appointed, and the following month elected to serve out the unexpired portion of McKinstry's term, defeating Jeremiah F. Sullivan, the Democratic candidate, in a close vote, 123,477 to 122,974.

When Works became a member of the Court Niles Searls was the Chief Justice, and Temple, Sharpstein, Thornton, McFarland, Paterson, and himself the associate justices. At the election the following month Beatty was elected Chief Justice over Searls. Temple resigned in June, 1889, whereupon Charles N. Fox was appointed. There were no other changes during the period Works served.

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In common with a goodly number of the men who have been justices, Works served a relatively short time, serving only a little over two years, that is, to January, 1891. He made an excellent showing as a jurist during this period. He gained the reputation of producing more opinions than any other member of the court.⁸ At that, he nowhere approached Edwin B. Crocker's record, who in 1863 was credited with putting out 280 opinions during the seven months he was a justice,⁹ as Works' number was set out as 141 for the two years and three months that he served. Works wrote the opinion in *Sharon v. Sharon* 79 Cal. 633, 22 P. 26, holding that William Sharon and Sarah Althea Hill had never been legally married, reversing Jeremiah F. Sullivan, who tried the case in the superior court in San Francisco. This reversal was based upon the insufficiency of the evidence to sustain the findings made by Judge Sullivan and upon which he based his judgment. There had been an appeal before this on the judgment roll alone, wherein the Court had affirmed Judge Sullivan (75 Cal. 1, 16 P. 345). In that appeal the Supreme Court had not been permitted to go back of the findings of the Court below, and had had to accept them as based upon sufficient evidence, McKinstry writing the opinion. As to whether or not the purported marriage contract really was a forgery will probably never be known. Judge Sullivan, who had an opportunity to observe the manner of the witnesses in testifying, concluded it was not a forgery.

Works did not become a candidate to succeed himself. It was generally understood that he declined to seek re-election by reason of the drain the work had made on his strength. "His work on the Supreme bench was extremely laborious and exacting," ran the statement presented by Lucien Shaw as the representative of the Los Angeles Bar Association at the time of the memorial exercises in the Supreme Court in honor of Works, with the result that "it so sapped his strength that he was forced to decline to be a candidate for re-election."¹⁰

Works had a legal treatise under way when he became a member of the Court, but dropped further work on it while a justice, taking the view that all of his time belonged to the state. While on the Court he sent an open letter to the *Century Magazine* which was published in its January, 1889, number, on the subject of lawyers' morals, which excited a great deal

of interest. It really constitutes a brief for the legal profession. Excerpts would constitute interesting reading, but space does not permit quotation here.

Upon leaving the Court, Works resumed practice in San Diego. He also resumed law writing, and in 1894 was published his *Courts and Their Jurisdiction*, a sizeable work in one volume. He continued to live in San Diego until 1896, when he moved to Los Angeles, where he continued in practice and law writing. While in San Diego he was associated at various times through the years with H. L. Titus, Charles Wellborn, J. A. Gibson, and Works' son, Lewis R. In Los Angeles he was associated for some time with his son, and Bradner W. Lee. After 1908 he practiced alone.

In Los Angeles he devoted himself much to irrigation and water law, and was counsel in considerable litigation relating to this branch of the law. About 1900 he wrote a brochure entitled *Irrigation Laws and Decisions of California*. It was also published in Shuck's *History of the Bench and Bar*, 1901 edition. It was about this time that he became the editor-in-chief of the *Encyclopedia of Evidence*, the first volume of which was published in 1902. While he severed his connections with this enterprise after a short time, he nevertheless had an important hand in putting out the first volume. One notes that the articles on admissions, comprising some 167 pages, and answers, comprising some thirty-five pages, are by him. His son Lewis R. also contributed a number of articles to this first volume.

In Los Angeles Works took an interest in politics, supporting measures designed to bring about reforms calculated to make for clean, efficient government. He aided in bringing about the adoption of the initiative, referendum, and recall, as applied to the city government of Los Angeles. These reforms were put in force there a number of years before they were adopted by the state. He became an active member of the Lincoln-Roosevelt Republican League which addressed itself to the adoption of these reforms and electing men in sympathy therewith. At this time he did not believe in the recall as applied to judges, but later became much less opposed thereto. In 1909 he became the Good Government League's candidate for the city council and was elected. Upon the organization of the council soon after the election he was made president. This period marks a transition of

JOHN D. WORKS

Thirty-Seventh Justice

emphasis as relates to law work to a first interest in the problems of politics and government.

While holding this position he became the Lincoln-Roosevelt Republican League's candidate for United States Senator, and was elected by the Legislature in January, 1911, defeating Alfred G. Spalding. He was the last Senator from California to be elected by the Legislature.

Works disappointed his supporters by announcing his opposition to the recall as applied to judges. "I am glad you had the courage and good judgment to oppose the application of the recall of judges," he wrote in a letter to Charles Stetson Wheeler.¹¹ The recall as applied to judges he felt was "reform run mad." "That's gratitude," remarked one of his progressive friends who had supported him for United States Senator.¹² John B. Sanford, from Ukiah, proposed a resolution in the state Senate that Works be recalled.¹³

The foregoing will give a hint of the excitement he stirred on this matter. Works stood his ground. "Indeed, Judge Works' friends are not quite sure whether they have not shouldered an old man of the sea who rides them with a pitiless goad," was the way one writer put it.¹⁴

True to his nature, Works applied himself in the Senate with the same diligence and industry that had characterized his career up to this time. He did a great deal of hard work the six years he served, running from March 4, 1911, to March 4, 1917. He supported much of the reform legislation that passed through Congress during his term of office. His strong advocacy of a single term for the President of the United States, introducing a proposed amendment to the Constitution to provide for prohibition, and his objection to all legislation during the latter part of his term which he felt would draw the country into war with Germany, made him a well known national figure. As relates to woman suffrage he declared it had been a failure in California.¹⁵

When he came to the Senate the matter of admitting New Mexico and Arizona as states into the Union was under consideration. Arizona's proposed constitution provided for the initiative, referendum, and recall, with recall applicable to judicial as well as

other officers. President Taft was firm in his objection to the recall as applied to judges. On April 20, 1911, only a few weeks after coming to the Senate, Works made a speech on the matter, arguing vigorously that it was Arizona's exclusive right to decide these matters. "Mr. President," he said in part, "I am proud of the people of Arizona who have come here with this constitution, so framed as to protect them and their State from fraud, corruption, and bribery in elections and public office."¹⁶ He referred to the stand he had taken in California and how overwhelmingly he had been overruled. It was a case, he asserted, of what the people wanted which controlled, and not what he or anybody else thought about it. His old friends were no doubt happily reassured.

The preamble to a proposed amendment to the Constitution to provide for national prohibition introduced by Works in 1913 ran in part as follows: "Whereas the consumption of strong alcoholic liquor is increasing at an alarming rate, thereby undermining the public morals, inflicting disease and untimely death upon many of our citizens, and blighting with degeneracy, their posterity, thus threatening the integrity of the life of the nation," etc.¹⁷ This was undoubtedly a pet project of his own, not inspired by the general sentiment of the people of his state. He did not make much progress with this measure.

Works' career in the Senate has been referred to as a stormy one. He was very much of an individualist and did not long efficiently team with any group. In 1912 he was opposed to Taft's candidacy, took the view that the candidacies of Theodore Roosevelt and Hiram W. Johnson had no legal standing in California, and declared that if he should vote at all, he would vote for Wilson.¹⁸ Still in the Senate he opposed many of the measures advocated by Wilson.

Upon leaving the Senate Works returned to Los Angeles, where he continued to reside until his death some eleven years later. He took up the practice again for a short time but did not do a great deal in that line. He did some writing, however. That he had not lost interest in the last big fight which he was staging while in the Senate, would appear from the writing of *European War and the Monroe Doctrine*.¹⁹ In 1919 appeared two little books by him, one entitled *Juridical Reform* and the other *Man's Duty to Man*.

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Both make excellent and challenging reading. While he did not advocate going back to the common law system of pleading in his *Juridical Reform*, a system which he declared had developed into almost an "exact science,"²⁰ he nevertheless saw much to admire in this system, and pointed out the great help a knowledge thereof would be to any lawyer drawing pleadings under the codes. "The certain and scientific mode of pleading that prevailed at common law has been superseded by one that is uncertain, slovenly, and unscientific,"²¹ he declared. Many of his suggestions have been and are being incorporated into the law and practice.

Man's Duty to Man reflects many of his ideals for greater social and economic equality among men. A quotation or two taken almost at random, may serve to give the run of the book. From his chapter on "The Wage-Earner" he wrote in part:

If this class of our people are paid fair wages, living wages; were furnished with healthful and comfortable places in which to work, and were provided with sanitary places in which to live when the day's work is over, it would regenerate thousands of them, and amply repay the employers who do their part in the improvement of their conditions, and advance the public interests immeasurably.

* * *

One of the great obstacles to the elevation of this class of working people is the saloon. It steals away their meager wages, brutalizes their minds, makes either sots or criminals of many of them, and makes mendicants of their children.²²

His chapter on "The Churches" commences as follows:

When one thinks of the wage-earner and the poor and needy, one's thoughts turn, almost instinctively, to the church as the one instrument through and by which help could be brought to these unfortunates. Surely such as these need spiritual consolation and regeneration as well as physical comforts. But when one turns to the church as a means of relief from conditions we have been considering, one meets only with disappointment. For some reason not easy to understand, the church has failed to meet its plain Christian duty towards this class of people.²³

In 1922 was published his *What's Wrong with the World?*

It is clear that while Works' name did not appear as a national figure after he left the Senate in the degree it had while he was a member thereof, he nevertheless continued to address himself fearlessly to the solution of the world's great problems, and

was disposed to give freely of his time and energy in that regard.

Works died in Los Angeles June 6, 1928. His wife had predeceased him. He left surviving him all of his six children, Lewis R., Thomas L., Ida (Darling), Laura (Betts), Ethel (Bancroft), and Isabel (Faris). The funeral services were under the direction of the Christian Science church, of which he had been a faithful and devoted member, Reverend Arthur Eckman, presiding, and were held in the chapel at Inglewood Cemetery. His remains were cremated and the ashes deposited in this cemetery. His estate inventoried \$48,372.36 as of the date of his death. Memorial services were held in the Supreme Court October 8, 1928.

Works was an average sized man or a little better. While he had suffered considerable sickness through the years, particularly the first half of his life, he nevertheless enjoyed a physical robustness in later years. His devotion through the years to his church led some to intimate that it was his religion that constituted the chief cue to everything he did. Works resented this, and characterized talk of this nature as "malicious fabrication from beginning to end."²⁴ This is not saying that his religion was not a source of great spiritual strength to him, and a great motivating force in his life. Undoubtedly it played a major role in giving purpose to life and inspired him much to bend every effort within his abilities to improve conditions in the world. And who will say that it did not help him to contribute a fair share in this regard.

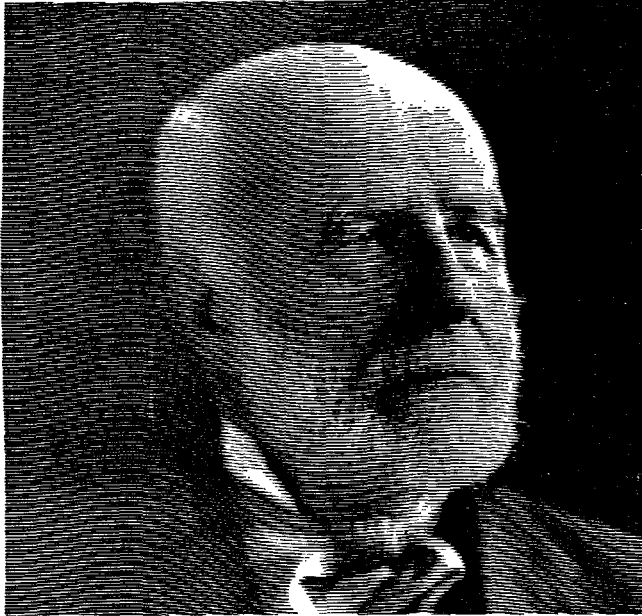
That Works was no ordinary man is clear from the record he left. Perhaps his most outstanding characteristic was his tireless, sustained, and endless industry. A close second to this would be his courage. This also was boundless. Nor could he ever have pushed through successfully the many projects which he did, whether in the law, law writing, social reform, politics, and the like, without an indomitable will.

It is not improbable that Works would have developed into one of the half dozen greatest justices the Supreme Court of California has had if he had remained on the Court through the years and applied himself as he did to everything else he ever did. Let the reader judge for himself which would have been the greater career, such a one, or the one he had.

FOOTNOTES

1. *Biographical Directory of the American Congress, 1774-1927*, p. 1729.
2. Shuck, *Bench and Bar of California* (1901); *S. F. Call* (Aug. 1, 1888).
3. *History of Dearborn, Ohio, and Switzerland Counties* (Weakley, Harriman & Co., Chicago, 1855), p. 1071.
4. P. 54.
5. P. 646 (1901 ed.).
6. 205 Cal. 793.
7. The writer saw this letter some twenty or more years ago in the office of the Secretary of State in the files containing the oaths of office of the justices. It is written on the letterhead of Wellborn & Works, San Diego, and dated September 17, 1888. The writer has a copy in his files.
8. *L. A. Times* (June 7, 1928), Part III, 1.
9. *Daily Alta California* (Jan. 6, 1864).
10. 205 Cal. 793.
11. *S. F. Call* (Feb. 1, 1911), 10, col. 2.
12. *S. F. Call* (Feb. 11, 1911), 26, col. 1.
13. *Ibid.*
14. *S. F. Call* (Feb. 15, 1911).
15. *L. A. Examiner* (June 7, 1928), 1.
16. Works' Speeches, 1911-1917.
17. *Ibid.*
18. *L. A. Examiner* (June 7, 1928), 1.
19. The writer has not seen this book, if in fact it was ever published. It is referred to at the front of *Juridical Reform* as a work authored by Works.
20. P. 50.
21. P. 40.
22. P. 53.
23. P. 149.
24. Irene Lucile May, *Political Career of John Downey Works* (Master's degree dissertation, Stanford University, 1930), pp. 48, 84-88, referring to piece in *The Sacramento Union* of January 12, 1911, p. C4.

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William H. Beatty

KENNETH M. JOHNSON and J. EDWARD JOHNSON

Most of William Henry Beatty's life was spent upon the bench. Like S. Clinton Hastings, he had the distinction of serving as Chief Justice in two states. It was sixty years from the time he first became a district judge in Nevada, until he laid down his duties as the Chief Justice of California. In between the Chief Justiceships of Nevada and California, however, he had some nine solid good years at the bar. His father, Henry O. Beatty, was a prominent lawyer both in California and Nevada, and served prior to his son as a justice of the Supreme Court of Nevada. On several occasions Beatty's father was strongly supported for the Supreme Court of California; Beatty was initiated into the mysteries of the law under his direction.

Beatty's service on the Supreme Court of California, a little over twenty-five and a half years, was longer than that of any other man who had served up to the time of his death. Since then Sherk established the longest period of service, a little over thirty-four years. Beatty came to this position by the direct vote of the people, and was re-elected from time to time. He was never anything but the Chief Justice.

While he did not produce as many leading opinions as a number of his associates, he nevertheless produced sufficient to demonstrate that he was not without the necessary ability.

Despite the esteem in which he was held, there were times when all was not as smooth for him and the Court as it might have been. His period of service, extending through those early years of the present century when criticism of the courts generally, and muckraking on a wide scale, were the order of the day, he and the Court did not entirely escape some of the consequences flowing from constant and continued attacks upon the ability of the courts to adapt their procedure and practice, and the law generally, to the needs of the time. Not only was the ability of the courts to adapt the administration of justice questioned, but the integrity of the judges, as well, breeding not only a general distrust in the minds of the people, but a feeling of hostility towards the judicial branch of the government. While patient on the whole, there were times, nevertheless, when his patience was sorely tried and he almost felt some discouragement; nor could he always regard himself secure in his position, by reason of the pressure of others who wished it for themselves. In the election of 1902 one of his ablest associates on the Court, Garoutte, went all out to take it from him, as Beatty himself had done from his predecessor, Searls, and undoubtedly he had Beatty guessing for a time.¹

Beatty was born in the village of Monclova, near Toledo, in northern Ohio, February 18, 1838, while his parents were temporarily there visiting relatives. The Beatty home was in Washington, Mason County, Kentucky, where the family returned not long thereafter. Beatty's sister, Emmeline,² told the writer how she and her mother visiting the old Kentucky home



Mr. and Mrs. William H. Beatty

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area years later traveled by boat on the Ohio to Maysville, with Washington nearby. Here "in the country,"³ using Beatty's own words, he lived until he was about fifteen. The area was more or less sparsely settled and fishing and hunting, major interests with Beatty, were still good. He is on record as declaring that nothing gave him so much satisfaction as engaging in these sports, save the coming of the circus, provided he could meet the financial requirements to participate. Beatty's mother was Margaret Boone, a relative of Daniel Boone, whom, according to family tradition, she met as an old man. Beatty was of English stock on his mother's side, and on his father's Irish. Beatty's background was therefore that of Kentucky and the South. He kept up his Southern connections through the years. Many of his Southern friends did not like his Republican politics. "His politics are very bad," said one of them. Another said he was without fault except for his "d - - - d politics."⁴

Beatty's family came to California in 1853. His father coming overland, arrived first. Beatty came by way of the Isthmus, and joined him a short time later. The family settled in Sacramento, where Beatty's father commenced the practice of law.

Beatty remained in California until about 1855, when he returned east to complete his education. Some of the sketches refer to him first attending a preparatory academy in Kentucky a year or so. This could possibly have been Center College in Danville, where Beatty's uncle, Armand Beatty, was one time president.⁵ Thereafter he entered the University of Virginia, where he was a student two years, 1856-1857 and 1857-1858. Apparently he did not graduate, although some notices so refer to him. He returned to California in September, 1858.

Upon returning to Sacramento he took up the study of the law and was admitted to practice by the Supreme Court of California at its January term in 1861. He thereupon started as an attorney in association with his father.

The Beatty's, like thousands of others, were not unaffected by the great mineral discoveries in western Nevada, at that time a part of Utah Territory, in the late fifties and early sixties, and in due course went there. Beatty's father went first, sometime in 1863, to Virginia City. Beatty following a short time thereafter settled in what was called the Reese River Country.

Beatty opened a law office in Austin and in a short time became the city attorney. When the State of Nevada was organized in 1864, he became a candidate for district judge of Lander County, and was elected. He served in this position ten years, being re-elected at the end of his first term. White Pine County was added to this district during his incumbency. Since a great deal of the litigation in his court involved mining rights, he became unusually well versed in this branch of the law. In later years Beatty liked to tell about a goat he owned in Austin, well known to everybody. Each morning the goat would go into a bar, place his front feet on the bar and keep them there until the bartender gave him his "morning's morning."

Beatty was elected Chief Justice of Nevada in 1874, taking his place on the Court in January, 1875. He thereupon moved from Austin to Carson City. Carson City at that time constituted the center of Nevada's greatest activity. To the northeast, some twelve or fourteen miles lay Virginia City, Gold Hill, and Silver City, boasting populations in the tens of thousands. To the east three or four miles lay Empire, and beyond that a few miles Dayton, near which the Sutro Tunnel, which drained the Virginia City and Gold Hill mines, has its mouth. To the north ten or twelve miles lay Ophir and Washoe. Empire, Ophir, and Washoe were great ore milling towns. At Empire was located the Mexican Mill, a large commercial stamp mill. No inconsiderable part of the ore from Aurora, a hundred miles south, as well as other distant areas, was brought here. In 1870 the United States established a mint at Carson City, and a great deal of the gold and silver produced in this area was coined there.

Beatty became a candidate to succeed himself as Chief Justice of Nevada as his term was expiring in 1880, but was defeated. Soon thereafter he returned to Sacramento, where he again took up the practice of law.

While it was in California that he blossomed out and made his great judicial career, his years in Nevada were nevertheless among the most important of his life. The sixteen years he served upon the bench there, running through the period of Nevada's most fabulous history, would alone constitute a career of no small distinction. For many years he was better known in Nevada than California. It was in Nevada

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also that he married Elizabeth M. Love of North Carolina in 1874.⁶

In Sacramento Beatty addressed himself vigorously to the law and became well known to the justices of the Supreme Court by reason of his work in that Court.⁷ While he interested himself in politics as well as the law, he never attained the position of leadership politically that many of the men did who have been justices of the Supreme Court, or that his father did. He made sufficient headway, however, to win for himself the nomination of the Republican Party for Chief Justice in its state convention in San Francisco in 1888, running in the election that followed against Niles Searls, the incumbent, and winning by a narrow margin.

Beatty took his place on the Court as the Chief Justice in January, 1889. He was then fifty years old, and in the prime of life. He outlived all the men who were on the Court when he became a member. Thirteen new men came to the Court during the period he served.⁸

As one of the reasons Beatty did not write more leading opinions it has been explained that his executive duties as Chief Justice consumed a great deal of his time, leaving a relatively small portion thereof for "creative effort."⁹ He was very painstaking and conscientious in this department.

One of the things which brought Beatty and the Court conspicuously before the people for a number of years was the Court's rulings in connection with the graft prosecutions which broke in 1906. The part the courts played in this interesting chapter of California's history was important. There were times when the formal opinions of the Supreme Court made the most interesting reading for the general public. Occasionally when rulings were not understood or accepted by the public, Beatty was not adverse to explaining and discussing them informally in letters or interviews, which were also given more or less wide publicity. This involved him at times in lively discussions as to the soundness of his and the Court's position. As it would be omitting an important part of his work on the Court and the place he assumed before the public not to review briefly the part he and the Court played in connection with these graft prosecutions, they are here referred to briefly.

Eugene Schmitz became mayor of San Francisco in 1902. It is now a matter of history that while

Schmitz was nominally the mayor, "the real leader . . . was Abraham Ruef, a man of shrewd ability, but of very low political ideals."¹⁰ With the cooperation of Schmitz he built up a powerful political machine which exacted heavy tribute from a great number of enterprises doing business in the city, especially the public utilities, who found it necessary to seek from the city government various franchises and permits. Also various other businesses, many of which included in their service the sale of liquors, requiring licenses and renewals thereof. These enterprises soon learning that their success depended much on their ability to get along with Ruef, accepted the situation, and not only conformed to his demands, which were not always modest, but in many instances took full advantage of it to get relatively quickly the things which ordinarily might not have come with such facility as they did through him.

In 1906 a number of public spirited citizens, notably James D. Phelan, Fremont Older of the *San Francisco Bulletin*, and Rudolph Spreckels set about to "clean up the government" of San Francisco, and to "punish the criminals."¹¹ In this they received encouragement from Theodore Roosevelt, and were successful in employing Francis J. Heney to carry out the prosecutions, and William Burns, head of the United States Secret Service, to help procure the necessary evidence. Heney had just won national fame in the prosecution of timber frauds in Oregon. In this work the reform group was fully backed up by William H. Langdon, San Francisco's district attorney, "an honest man who had slipped into office through inadvertence on Ruef's part."¹² As the movement was getting under way, Ruef sensing the mischief it would work to his fortunes arranged to have James L. Gallagher, a member of the board of supervisors, and acting mayor in Schmitz' absence, remove Langdon as district attorney and appoint Ruef. This did not work out as Ruef had planned, however, and after a short battle Langdon continued in his position.

The work of reform was retarded for a season by reason of the earthquake and fire, but taken up again a little later when the rebuilding of the city gave opportunity for even more corruption than had been possible before. In due course Schmitz and Ruef were convicted, Schmitz first of bribery and Ruef of extortion. Ruef had at first been charged with the same offense Schmitz was convicted of but escaped prose-

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cution thereon by reason of having turned state's witness.

However, the prosecution was not content with merely convicting Schmitz and Ruef and their accomplices, but proceeded to also prosecute the host of persons who had paid bribes to Ruef and his machine. "So long as Heney and his supporters confined their attention to Ruef, Schmitz, and the Supervisors, public opinion ran strongly in their favor. But with the next step, the trial of Patrick Calhoun and Tiley L. Ford of the United Railways, the 'graft prosecution' as the movement was called, at once lost support in many quarters. As the trial proceeded, San Francisco experienced something of the old excitement and tenseness of Vigilante days. Most of the newspapers turned against the prosecution with a bitterness of invective rarely equalled in California journalism. Attempted intimidation gave place to actual violence. One of the Supervisors named Gallagher, whose testimony was vital to the prosecution, had his house blown up with dynamite. Fremont Older was kidnaped and carried as far south as Santa Barbara in what was believed to be an abortive effort to bring about his assassination. Heney was shot in the head while conducting the prosecution, but escaped a mortal wound. His assailant, apparently deranged, was imprisoned and later committed suicide."¹³ These are the sober words of history, and will serve to give a background to the part played by the Supreme Court in connection with these prosecutions.

The first battle in the Supreme Court related to the indictments against Theodore V. Halsey of the Pacific States Telephone Company. He was one of 284 persons who had been indicted for paying bribes. His was, therefore, a test case for all of them. The superior court in San Francisco ruled the indictments good. Judges William P. Lawlor and Frank H. Dunne were thereupon ordered to appear before the Supreme Court to show cause why they should not be prohibited from proceeding.¹⁴ The Supreme Court held the indictments valid.¹⁵ The fact, however, that so able a judge as McFarland dissented with an opinion indicates the question had not been free from doubt. The newspapers in San Francisco played up the decision as though one of the great and important victories of all time had been won. The *San Francisco Call* devoted practically all of the front page of its issue of September 24, 1907, with headlines across

the whole page and pictures of all seven of the justices to it. The statements by the attorneys on the winning side showed the accused were now to be given no quarter. "Oh, this decision will be changed. The Supreme Court frequently reverses itself," was the comment of Earl Rogers of the defense.

The Supreme Court did not reverse itself, but something as good for the defendants transpired. The juries would not convict. The magic power of Earl Rogers and his associates, and the loss of popular support was more than the prosecution could overcome. Emmet Seawell, judge of the superior court in Santa Rosa, was called in to try Halsey. When the jury disagreed in the second trial he could no longer conceal his disgust. "Each one of these trials has appeared to me to be a farce," he said to the jury, "and I have made up my mind not to be a party to any more actions of this sort. Under no circumstances will I conduct another trial of the case. After lending myself to such a thing I could blush with shame to sit in judgment on some poor petty larcenist or burglar. You men, however, live in the atmosphere of the situation that has been created for yourselves here in this city. I do not have to."¹⁶ Halsey was never tried again. These results were more or less accepted and the publicity did not attain prominence.

Soon thereafter, Mayor Schmitz having been convicted of the crime of extortion, the claims of Edward Robeson Taylor as the de facto mayor of San Francisco were upheld by the Supreme Court. Again there was rejoicing among a great part of the public. Again this was front page news with the pictures of all the justices.¹⁷

The following year, 1908, Schmitz's appeal was heard in the district court of appeal. To the astonishment of the world it reversed the court below, finding several errors in the manner in which the trial had been conducted, but the fatal defect was the fact that the indictment did not state any crime, in that it had not alleged that Schmitz's and Ruef's threats to the restaurant keepers seeking licenses or renewals were unlawful. The indictment had not alleged that Schmitz was the mayor and Ruef was the political boss. The court, therefore, reasoned there was nothing to show they were officials, and it not appearing that they were anything but private citizens their threats had not been unlawful. Furthermore, it was held that licenses were not property, and that there-

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fore there had been no deprivation of property. This decision was rendered by a unanimous court, James A. Cooper, the presiding justice, writing the opinion with Justices Hall and Kerrigan concurring.¹⁸ When the prosecution applied to the Supreme Court for a hearing there it was denied by a unanimous Court. Ten judges, therefore, among them a number of the ablest the courts of California ever had, had been unanimous in their view that the indictment had not stated a cause of action. This should have been enough to have removed all doubt as to the soundness of the ruling. The people, however, could not understand it at all. Those who had followed the trial had no doubt of Schmitz's guilt, nor could there be any. And Ruef had confessed extortion. The courts were at once blamed for this miscarriage of justice and were regarded as instrumentalities of thwarting justice by their overstrict adherence to a mass of court-made technicalities, rendering it well-nigh impossible to convict a criminal if he only retained the right kind of lawyer.

It must have been embarrassing to the attorneys for the People, concededly among the ablest lawyers in the country, for here lay the real cause of the reversal, the indictment having been drawn by them. Mr. Heney's reply to this in part was that the indictments had been prepared by Hiram W. Johnson "with the assistance of another lawyer, whose ability is publicly and frequently acknowledged by the astute and technical Mr. Ach." (Henry Ach, Schmitz' chief counsel.) "After the indictments had thus been prepared," he continued, "they were analysed and discussed in my presence by the learned gentlemen who prepared them, and after the law on the subject was fully explained to me I approved and used them." "I was then and still am thoroughly convinced that these indictments correctly and sufficiently charge the offense of extortion under our statute."¹⁹ The attorneys for the prosecution contended that it had not been necessary to allege that Schmitz was the mayor, and Ruef the boss, as the appellate courts were bound to take judicial notice of these facts. Of course, there can be little doubt that the justices, all of whom lived in San Francisco, or its immediate vicinity, had actual knowledge that Schmitz was the mayor.

Heney wrote a long letter bitterly attacking the reasoning of the courts on this point.²⁰ Beatty wrote an equally long letter explaining and defending it.²¹

The profession was divided. So great an authority as John H. Wigmore, dean of Northwestern University Law School, sided with Heney and gave it as his view that the Chief Justice had failed completely to grasp the philosophy underlying the doctrine of judicial notice.

"And this is just where the learned Chief Justice is to be criticised," observed Wigmore. "He does not for a moment ask or answer the question, 'Did we actually as men and officers, believe these facts to be notoriously so?' but refers to certain mechanical rules, external to his mind. What that Supreme Court should have done was to decide whether they under the circumstances did actually believe the facts about the status of Schmitz and Ruef to be notorious. In not so doing, they erred against the whole spirit and principle of judicial notice."²²

John Currey, a former Chief Justice, came forward with a learned argument, taking sharp issue with Dean Wigmore and agreeing with the Court. He concluded his argument with the following words: "I wish to add in closing that I have carefully examined the opinions and decisions of our appellate courts in the Schmitz case and believe them to be sound expositions of the law. So they are esteemed by the great men of the legal profession among them Elihu Root and William Howard Taft."²³ Currey was ninety-four past at the time and still mentally sharp.

Beatty's carefully worded explanation evoked as much criticism as the decision had done. Popular opinion was against the decision. The *San Francisco Call* commented editorially:

The mischief of the Schmitz decision has been done and cannot be remedied as far as that case is concerned. Long ago the whole world passed judgment on the judges. There is an appeal court higher than the Supreme Court of California. But the injury to the jurisprudence of California continues and will continue as long as men of Judge Beatty's mental type hold the bench, building up trifling and immaterial technicalities to the height of mountainous obstacles on the path of justice. This is the jurisprudence that has made it almost impossible to convict a wealthy criminal.²⁴

While Ruef confessed his guilt to the extortion charges similar to those upon which Schmitz was convicted, he had to stand trial on bribing the supervisors of San Francisco, and was convicted, which was followed by an appeal, the appeal going to the same court that had decided the Schmitz appeal.²⁵

Again Justice James A. Cooper wrote the opinion for a unanimous court with Justices Hall and Kerrigan concurring. This time the judgment was affirmed.

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Ruef's trial before William P. Lawlor had commenced August 27, 1908, and continued until December 10. The entire record, "including the testimony in full by question and answer, together with the arguments of counsel on questions of law during the trial, and the rulings thereon, the full and complete examination of the jurors in the impanelment of the jury, and even the argument of counsel as made to the jury" was certified up to the court of appeal. It consisted of twenty-four bound volumes, containing over twelve thousand printed pages, with ten volumes of briefs, aggregating some two thousand, eight hundred printed pages. Near the beginning of its opinion the court observed: "We have never before known of such a record being presented to an appellate court, whose function is to pass upon questions of law. We have, however, performed the task as fully as our strength, time and endurance would permit, and have passed upon apparently the most plausible and material points urged by the appellant to the best of our ability."

Upon the handing down of the adverse decision and a denial of a rehearing, Ruef applied to the Supreme Court for a hearing, as Schmitz had done. In due course the Supreme Court granted his application. This gave rise to another outburst of indignation in many quarters, and whereas there had been doubt as to the wisdom of making the proposed recall law, which was at that time under consideration in the Legislature, applicable to judicial office, there were now those who were loud in advocating its application to the judges. The Supreme Court was now riding over rough waters, the roughest it ever encountered in all of its history. For a while Beatty feared drastic measures against the Court. In an interview he observed that he did not have "the slightest doubt in the world that the Legislature" would "adopt the recall for the judiciary, and that some one" would "set it in motion at once, with the result the Supreme Court" would "be recalled."

"Perhaps, so far as I am concerned, I ought to be recalled. It is hard work and I am getting old, and don't care a cent what the Legislature does."^{25a} Of all the members, Beatty was truly the captain in the storm that blew up.

In the course of about a week after the order was made Senator George W. Cartwright from Fresno introduced a resolution in the Senate calling for an

investigation of the Supreme Court, which was referred to the judiciary committee.²⁶ There were those who suspected this was a more or less political move on the part of the Democrats to embarrass the Republicans. The Legislature moved cautiously, and it was hardly expected that much would come of it, when about two weeks later there was published in the press a letter by John D. Works, a former member of the Court, and at this time a recently elected United States Senator, to Leslie R. Hewitt, a member of the state Senate, declaring that the Legislature was shrinking from a plain duty by not impeaching Justice Henshaw, if the charges that had been publicly made against him as relates to his vote to permit a hearing for Ruef, and on other items, were true.²⁷ This caused a great stir. The Governor, Hiram W. Johnson, called conferences. The Attorney General had taken the position that the order had been improperly made. In due course he filed a motion that it be set aside. "... There is to be an investigation of the Supreme Court Justices," declared the *San Francisco Examiner* as of February 16, 1911. "Beyond that the Legislature will submit the Constitutional Amendment providing for the recall of the judiciary." The Court directed a letter to the Legislature, signed by all of the justices except Shaw, who was away, that the Court would welcome an investigation.

The facts in connection with the filing of Ruef's petition were these. The petition for a hearing had been filed in the Supreme Court January 3, 1911, whereupon there had been prepared by the secretary of the Court a form of order granting the application which had been left in the chambers of the Chief Justice to be subscribed by such of the justices as were in favor of granting the application. This was in accordance with the customary routine of the Court. On January 10, 1911, Henshaw, about to leave the state for an absence extending beyond the period within which the order might be made and "believing that the application should be granted, subscribed his name." The next day he left the state and remained away until after the time when such an order might be made. On January 19, Justice Melvin signed it. On January 21, the remaining five justices, Beatty, Shaw, Angellotti, Lorigan, and Sloss, met in the chambers of the Chief Justice for consultation on the matter, at which time Lorigan also signed the order. Shaw, Angellotti, and Sloss declined to sign it. Beatty reserved his decision, and on the last day

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that it could be done, January 22, affixed his signature, giving the order the four signatures necessary to make it, in form at least, a valid order.²⁸

In filing a motion to vacate this order the Attorney General attacked its validity on a number of grounds. The Court sustained the motion on the single ground that Justice Henshaw had not been in the state at the time it would have become an order if his signature had been binding when the fourth signature was attached. "We have seen that the concurrence of four justices qualified and with power to act, at the very moment of action as a court..." As Henshaw had not been so qualified at the time Beatty affixed his signature, the order really contained only three signatures, not sufficient to make it a valid order.²⁹

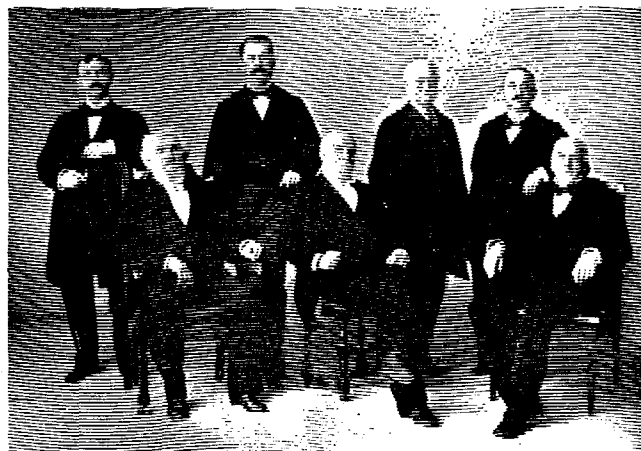
Beatty and the justices had been open and frank about it all from the very beginning. They kept nothing from anybody making inquiry, whether representatives of the press or officials. It was the first time a situation like this had ever arisen in the state so far as the justices were informed, and it raised a new question. When they were called to give consideration to it they all concurred that the order had been improper, and promptly vacated it. The action taken by the Court seemed to satisfy everybody and things quieted down and nothing more was done.

Nothing is clearer after the years than that the attacks upon the Court at this time had their origin more in the temper of the times than any shortcomings on the part of the Court, as a court, or on the part of its individual members. Henshaw's integrity was later questioned, but it does not appear that it was in any degree justified so far as the Ruef case was concerned.

Beatty was not infrequently consulted in connection with various movements designed to improve the administration of justice. He often threw his active strength with such movements. His statements on such occasions reveal his progressive spirit.

When the proposed constitutional amendment, which was in due course adopted, providing for a district court of appeal was before the people for consideration in 1904, W. S. Goodfellow of the San Francisco Bar Association wrote a letter to Beatty asking his views on the proposal. Beatty replied with a long letter giving his reasons for unqualifiedly supporting the proposal.³⁰

Another time he participated in a spirited meeting of the San Francisco Bar Association when it was addressing itself to the problem of remedying the conditions which were destroying the confidence of the people in the courts and in the profession generally. Beatty's bit on this occasion related to improvements in selecting juries.³¹ "The assessment roll," he remarked, "should be the jury list." He advocated a sharing of jury burdens by all, including those who might be inconvenienced in their business or profession by serving on a jury. "... The burden of jury serving should be borne by all equally," he continued. "Those on whom serving on the jury would mean an excessive hardship of their business could be excused by the payment of a sum of \$50, this money going to a fund for the greater recompense to those who do serve. It is only proper that a citizen should meet his



Supreme Court About 1898

Standing: W. C. Van Fleet, C. H. Garoutte, Ralph C. Harrison, F. W. Henshaw; seated: T. B. McFarland, William H. Beatty, Jackson Temple

obligations to the community, and if he does not care to give his time he should be allowed the opportunity of paying."

While Beatty devoted the great part of his time and energy to his work as Chief Justice, he nevertheless found time to take on some additional responsibilities as he went along, designed to further the public interests. A single one only of a number of such instances, bringing him in working association with some of the first names in California, like David Starr Jordan, Charles Stetson Wheeler, Curtis D. Lindley, Benjamin Ide Wheeler, etc., is mentioned.

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In 1906 he consented to act as the third arbitrator in connection with a dispute between the United Railways and their employees with regard to wages and hours,³² the other two being Francis J. Heney, who had been chosen by the employers, and Father Peter C. Yorke, chosen by the employees. Heney soon dropped out, however, whereupon Major Frank McLaughlin took his place. It is almost impossible to understand how Beatty was ever induced to accept this assignment completely occupied as he already was.

After an extended hearing and the taking of a great mass of testimony the awards were given. While the arbitrators, or a majority of them, managed to agree sufficiently to formulate an award, it is clear that there had been great disagreement among them. All three gave out long, involved statements in justification of their positions and criticizing the positions of the others.³³ A glance at the headlines and statements of the groups involved, published in the papers at the time, shows what a headache Beatty had stepped into. Following are a sample or two.

"Father Yorke Makes Vigorous Attack on the Arbitrators Award."

"Public Will Condemn Judge Beatty and Uphold Rev. Father Yorke . . ."

"Dissenting Arbiter Makes Rejoinder to the Judge."

At the commencement exercises of the University of California in May, 1913, there was conferred upon Beatty the honorary LL.D. degree. In conferring it President Wheeler characterized him "A man of integrity and conscience, by his office and his person, the firm and central pillar in the structure of the State."³⁴

On Beatty's seventy-second birthday he was tendered a reception at the University Club of San Francisco presided over by Warren Olney, Jr. Orrin Kip McMurray was one of the principal speakers. Beatty's response on this occasion revealed him to great advantage.³⁵

Beatty was planning to retire from the bench when his term should expire in January, 1915.³⁶ From his words, "... we, who are old," used in 1910, and "I am getting old," in 1911, it is known that he was not unmindful of his years. During his later years he

found it necessary to conserve his strength and came to divide his time almost exclusively between the Court and his home. He was content to drop his activities in other fields. As his term was drawing to a close, he announced that he would not be a candidate for election again.

However, he was not permitted to complete his term, as he died on August 4, 1914, five months before his term expired, passing away at his home in San Francisco. His health had failed somewhat rapidly the last few months of his life. It was the exertion of walking to the telephone that overtaxed his heart, and was the immediate cause of his death.

Beatty left surviving him his wife, who was an invalid at the time; his son, Henry Oscar; two sons of his deceased daughter, Eugenia (Mrs. Seldon S. Wright), William Beatty Wright, and Seldon S. Wright; and his sister, Emmeline, mentioned above, who was traveling in Europe at the time.

Beatty was a medium or somewhat above a medium-sized man, square in build, weighing a hundred and seventy-five pounds or so. There were times when he was heavier. In his younger days his hair was brown. However, he lost it all on top when scarcely out of his teens. The full beard he wore all his mature life was also started while he was a young man. His eyes were blue. He did not change in appearance a great deal the twenty-five years he was the Chief Justice of California, except that he looked older as time went by.

It is not clear that his sense of humor was always too keen when the merriment was at his expense, as may be illustrated by his reaction when a street sprinkling wagon doused his trousers while going to court one morning. He had the careless driver arrested while everybody else smiled.³⁷

A man of fine qualities of heart and mind, engaging personal gifts, Beatty's greatest gift was nevertheless the quality of inspiring confidence in his absolute integrity. Men trusted him implicitly, not only for his strength of character, but also for his intelligence and abundance of human understanding.

In an editorial at the time of his death the *San Francisco Examiner* observed that "the greatness of the Chief Justice was a greatness attainable by any man, for it was the greatness of goodness, of integrity,

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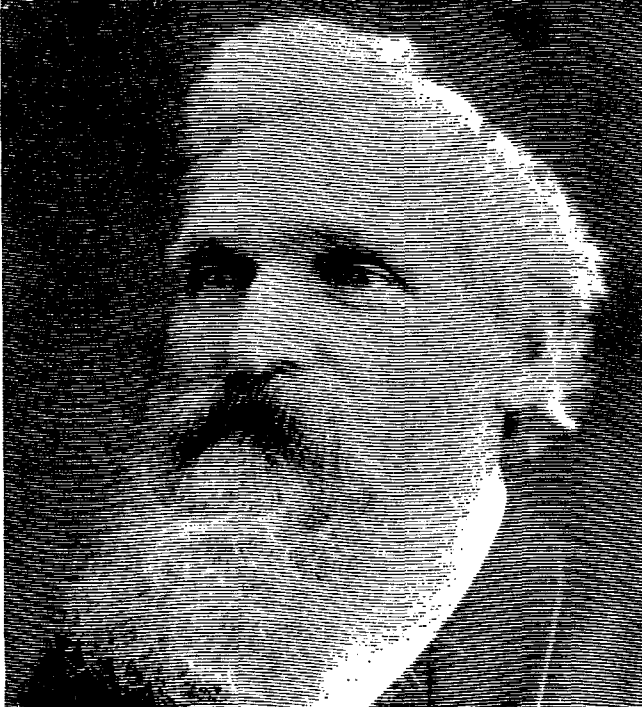
of zeal to do right." "Other qualities and powers he had, too," it continued, "but one always thought instinctively of William H. Beatty as a good man."³⁸ It may also be added that he was a good judge during a transitional period of stress and strain both economic and political.

FOOTNOTES

1. See Garoutte sketch.
2. Mrs. George E. Bates, San Francisco. Interview in 1938. Mrs. Bates was born in Sacramento in 1853. Beatty had two additional sisters, Mary (Mrs. Samuel C. Denson) and Margaret (Mrs. O. P. Willis) of Sacramento. Mr. Denson commenced practice in Sacramento in association with Beatty and Beatty's father. He later became a judge in Nevada, and later in Sacramento. In later years he was associated with John J. De Haven in the practice in San Francisco.
3. Shuck, *History of the Bench and Bar of California* (1901), p. 660.
4. *Sacramento Daily Record-Union* (Aug. 2, 1888).
5. Davis, *History of Sacramento County*.
6. *Ibid.*
7. *Sacramento Daily Record-Union* (Aug. 2, 1888).
8. Sharpstein, Temple, Paterson, McFarland, Thornton, and Works were the associate justices when Beatty came to the Court. Fox, De Haven, Garoutte, Harrison, Fitzgerald, Van Fleet, Henshaw, Van Dyke, Angellotti, Shaw, Lorigan, Sloss, and Melvin were the new men who came to the Court during Beatty's incumbency.
9. Charles Stetson Wheeler, 168 Cal. 801.
10. Robert Glass Cleland, *A History of California*, p. 431.
11. *Ibid.*, p. 432.
12. *Ibid.*, p. 433.
13. *Ibid.*, p. 433.
14. *S. F. Call* (Sept. 24, 1907).
15. *Halsey v. Superior Court* 152 Cal. 71.
16. *S. F. Call* (Feb. 10, 1911), 5, col. 5.
17. *S. F. Call* (Aug. 20, 1907).
18. *People v. Schmitz* 7 Cal. App. 330.
19. *S. F. Call* (Nov. 1, 1908), 20, col. 1.
20. *Ibid.*
21. *S. F. Call* (May 3, 1908).
22. *S. F. Argonaut* (March 27, 1909).
23. *Ibid.*
24. (Nov. 2, 1908), 6, col. 4.
25. *People v. Ruef* 14 Cal. App. 576.
- 25a. *S. F. Examiner* (Feb. 16, 1911), 1.
26. *S. F. Call* (Feb. 2, 1911), 4, cols. 2, 3.
27. *S. F. Call* (Feb. 11, 1911), 10, col. 1.
28. *People v. Ruef* 14 Cal. App. 621 et. seq.
29. *Ibid.*, 623.
30. *S. F. Call* (Nov. 2, 1904), 14, Col. 5.
31. *S. F. Call* (May 21, 1909), 5, col. 1.
32. *S. F. Call* (Sept. 25, 1906), 14.
33. *S. F. Call* (March 1, 1907).
34. Letter from President's office dated September 8, 1938.
35. *S. F. Chronicle* (Feb. 19, 1910), 5.
36. *S. F. Chronicle* (Aug. 5, 1914).
37. *S. F. Call* (May 30, 1907), 14.
38. (Aug. 6, 1914).

CHARLES N. FOX

Thirty-Ninth Justice, June, 1889 - January, 1892



Charles Nelson Fox

Charles Nelson Fox's career had its beginning in circumstances as primitive and humble as Lincoln's. He found his way to the law by way of the printer's trade, country editing, and county recorder of deeds. While the law came to claim the greater part of his time and energy, community and fraternal activities also played a part in his life. He was endowed with the personal qualities that inspired feelings of friendship and drew people to him.

Fox was born in a log cabin in Redford Township, Wayne County, Michigan, March 9, 1829, and was the son of Benjamin F. and Betsy (Crane) Fox. His father was born in Whitesboro, Oneida County, and his mother in Mentz, Cayuga County, New York. Both were of English stock. Both of his grandfathers took part in the Revolution on the side of the Colonies.

Fox divided his childhood years between work on the farm and the common school of the community, with the former taking precedence. When he did attend school it was necessary to walk two or three miles to the log building where it was maintained.

At fifteen Fox went to Ann Arbor, not a great distance from his home, where the University of Michigan had opened its doors two or three years before. He procured employment there to defray his board and lodging, and entered upon a classical course at the university. After a short time he had to withdraw on account of persistent nosebleed. Sometime after this, while still doing what he could to overcome this affliction, he was struck by lightning while riding a horse. The horse was killed. After that he never again had nosebleed. Whether or not a mere coincidence Fox nevertheless was impressed by the fact the rest of his life. When his health permitted a return to his studies he concluded the struggle to maintain himself would be too great and decided to go to work instead. He first obtained employment with the *Michigan Argus*, a little newspaper published in Ann Arbor, apprenticing himself to the trade of printing and all that went with putting out a country newspaper. By the time he was twenty-one he was having a hand in the editorial duties. He also interested himself in politics and as a young man of nineteen had the privilege of introducing Lewis Cass at a political meeting. He had known Cass a long time and the latter referred to him as one of his boys. Cass offered to get him an appointment to West Point, which he declined. He was interested in an appointment to Annapolis, however, but his family was too opposed to this for him to seek it. At twenty-one Fox became



Mary Swartz Fox

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recorder of deeds in Ann Arbor. Later he was elected city recorder, and for a short time was acting mayor.

It was about this time that Fox took up the study of the law, studying in the office of a firm by the name of Kingsley & Morgan, in Ann Arbor. *Fifty Years of Masonry in California* states that he was admitted to the bar in Michigan in 1852, and commenced practice there. Shuck states he was admitted in 1856.

Several considerations seem to have influenced Fox to come to California. Members of his father's family had come here and settled in San Mateo County. Also his wife's health was poor and it was thought the change might help her. Fox arrived by way of the Isthmus in August, 1857, and soon thereafter opened a law office in Redwood City. He had been there a short time only when a vacancy developed in the district attorney's office and he was appointed. He held this position some four or five years. Upon leaving the district attorney's office he addressed himself full time to private practice, becoming associated first with his brother George W. Fox, the association being known as Fox & Fox.

Fox became local attorney for the old Spring Valley Water Works, which furnished San Francisco and the nearby communities with water, and for a number of years was engaged in acquiring right of way titles. This involved negotiations and the examination of a great number of abstracts of title. In later years it is said nothing pleased him more than for a thick abstract of title to come into his office for examination. His son-in-law, Roscoe S. Gray, stated he would approach the task much as an ordinary person would an intriguing new novel. Settling himself down in a comfortable chair and lighting a black cigar he would proceed, quietly turning page after page without making any notes, and as his cigar would be consumed would light another and continue on, and so on until he reached the end, whereupon he was ready to write his report. Old lawyers who have examined complicated abstracts two or three inches thick, and who with the aid of plats and notes have still been puzzled will wonder, and shake their heads!

When the San Francisco and San Jose Railroad was organized Fox was retained to procure titles for it. This railroad was built in a large degree with subsidies from San Francisco and San Jose. About this time, 1866, he became associated with Alexander W. Campbell and his son Henry C. in San Francisco, the

association becoming known as Campbell, Fox & Campbell. The San Francisco directory also sets him out as president of the Western Pacific Railroad, which ran from Sacramento to San Jose, with a branch leading off to Niles and Oakland. Apparently he served in this position a couple of years. These roads in due course became part of the Southern Pacific. Aside from his work in the civil branches of the law he also figured in some prominent criminal cases. In 1871 he had some kind of arrangement with Zerah P. Clark, which was known as Clark & Fox. Their offices were maintained at the same place as Campbell, Fox & Campbell's. This arrangement did not last long.

While residing in Redwood City he was a town trustee two years. Twice he was boosted for the twelfth judicial district court, comprising San Mateo County and a part of San Francisco, but declined to become a candidate.

Fox moved from Redwood City to Oakland in 1875, continuing to maintain offices in San Francisco.

About 1877 the firm of Campbell, Fox & Campbell was dissolved, and thereupon Fox took M. B. Kellogg, who had been a clerk in the old firm with him, the association becoming Fox and Kellogg. Later F. R. King, son of the famous early day crusader, Thomas Starr King, joined them.

Fox continued to participate in political and community affairs upon moving to Oakland. In 1875 he was a member of the Republican state committee. In 1876 he was chairman of the Republican state convention, and was nominated for presidential elector, but defeated. In 1879 he was elected as assemblyman from Alameda County. This was the first Legislature to meet under the new Constitution.

Fox's work in the Legislature was outstanding, and has been regarded as one of his greatest public services. He became chairman of the judiciary committee, and carefully studied the numerous bills referred to this committee. "During the hundred days of the session it is said he reported a thousand bills for indefinite postponement," very few of which were passed over his objection, and "every one that was passed against his opposition, on the ground that it conflicted with the Constitution, was pronounced unconstitutional by the Supreme Court."¹ His work in this session was laborious in the extreme.

CHARLES N. FOX

Thirty-Ninth Justice

Fox served as a member of the board of education of Oakland four years, and was president of the board two years.

Fox was appointed a justice of the Supreme Court of California in June, 1889, to take the place of Temple who had resigned on account of sickness, and served until January, 1891, a period of a year and a half. Beatty was the Chief Justice. There were no changes in the Court the period he served. Despite his short service Fox wrote a number of opinions that have found their way into the casebooks of the first scholars of the law, men like James Barr Ames. Probably the opinion for which he is most famous is *In re Jessup* 81 Cal. 408, which involved the adoption of an illegitimate child by the acts of an imputed father. When this case first came to the Supreme Court it affirmed the court below, by a four to two division, Works writing the opinion, concurred in by Sharpstein, Paterson, and Beatty, while McFarland and Thornton dissented. On rehearing the Supreme Court reversed itself, 143 Cal. 702, Fox writing the opinion, concurred in by McFarland, Thornton, and Sharpstein, while Beatty, Paterson, and Works dissented. This is a leading case on the subject in the United States. Fox's part in this case was the occasion of considerable unpleasantness to him by reason of a newspaperman by the name of McKune charging that Fox had stated the law as he had to protect himself as he was in the same position as Jessup. McKune later retracted, but the retraction did not receive the publicity which the accusation had.²

With Fox and Works on the Court together, it had two of the hardest working judges the Court has had serving at the same time. Said Shuck of Fox: "He did a larger volume of work than any other man connected with the Court."³ Said the *Los Angeles Times* of Works: He was "credited with writing more opinions during his term than any other two members of the Court."⁴ While Fox did not play a prominent part in the Sharon-Sarah Althea Hill cases, he nevertheless came in on this and wrote one short opinion.⁵

Fox well deserved election to succeed himself, but failed to receive the nomination in the Republican convention, the same going to John J. De Haven, who was elected.

Upon leaving the Court Fox resumed practice in association with M. B. Kellogg. Among their clients were two very substantial ones, Spring Valley Water

Company and Pacific Mutual Life Insurance Company. In 1892 or 1893 Roscoe S. Gray, Fox's son-in-law, became a member of the firm. Their offices at the time were in the Pacific Mutual Life Insurance Building at 508 Montgomery Street. Fox and Mr. Gray addressed themselves largely to Pacific Mutual's affairs, while Kellogg took care of the water company. Fox's usefulness to the water company lessened as time went on by reason of political considerations more and more entering into the service it required. Fox made it a strict policy to do nothing that involved working with the San Francisco Board of Supervisors.

In 1895 Kellogg withdrew from the firm and took the water company with him as his client. Fox and Gray continued together, retaining Pacific Mutual as their client. It was a hard blow to Fox to see the water company go from his office. He really had no justification for taking it hard, however, as Mr. Kellogg had been entirely loyal to him. The time had come when Fox's usefulness as its attorney had passed its high mark. Fox and Gray continued together until Fox's death.

Fox died at his home in Oakland May 2, 1904, following a stroke of a day or two before from which he never regained consciousness. He had taken care of his office work up to within two or three days before, and his death, therefore, came as a surprise. He was seventy-five. He left surviving him his wife; and three daughters, Minnie (Mrs. William Mosher), Mary (Mrs. Roscoe S. Gray), and Ida Frances. The funeral took place from his residence, 1057 Market Street, and was under the direction of the grand and local lodges of the Odd Fellows. W. L. Barnes gave the fraternal eulogy, and the religious part was under the direction of Henry Jewett of Berkeley, a long-time friend of deceased. The pallbearers were for the most part past grand presidents of the grand lodge of the Odd Fellows. Fox's remains were interred at Mountain View Cemetery in Oakland.

Strangely, considering the great volume of work he and his office had handled through the years, Fox left only a small estate, the same inventorying less than \$20,000. As relates to finances he had one weakness, namely, mining properties that did not pay off. He owned a large interest in one mine that he frequently visited.

Fox was a good-sized man, over six feet tall, weighing around two hundred pounds. He was broad shoul-

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dered and of a strong physique. His eyes were blue or blue-gray and his complexion light. He wore a beard from an early age. He said he wore it to cover his lips which he felt gave him a pouty look. He was pleasant of disposition, and slow to take offense, but once roused was not without spirit. He argued a case in the Supreme Court of the United States once, when he felt that Field without justification went out of his way to give him a hard time. It bothered Fox to the degree that he later remarked that he came perilously near placing himself in contempt. He was a gifted public speaker and some of his many fraternal efforts were published. He composed some poems, although it does not appear that any have survived. This has a bearing on his tastes, however.

Fox was married three times. His first marriage took place in Michigan. This wife passed away in California, leaving three children, Frank, Capitola, and Annie. Thereafter he married her sister. When the latter passed away he married a widow whose maiden name had been Mary Swartze, with two children, George and Minnie. Fox adopted these chil-

dren. He had two children by this last wife, Mary (Mrs. Gray) and Ida Frances.

While Fox was for a number of years active in the Masonic Order, the Odd Fellows claimed his fraternal interests his last years. At one time he was the grand president of the latter order.

Remaining on the firing line he experienced disappointments to the last, some of them bitter ones.

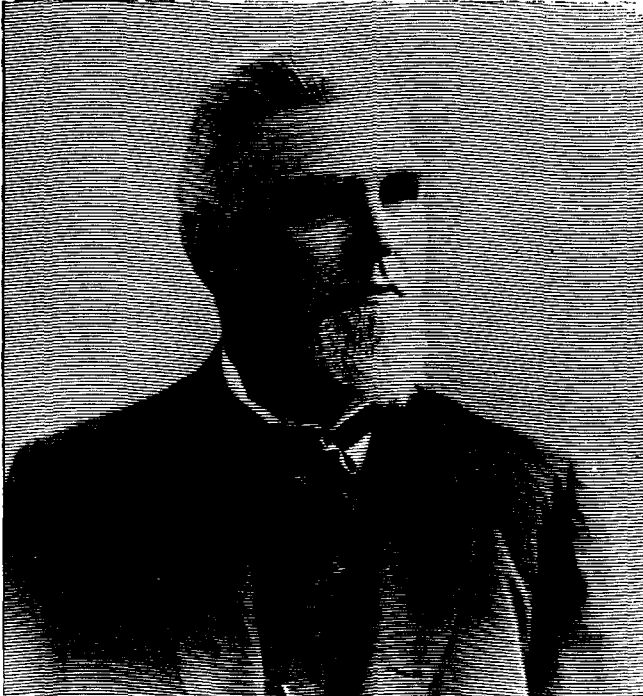
When the writer asked his son-in-law, Roscoe S. Gray, to summarize in a word or two his most outstanding quality, he replied with the single word "*faithful*." The manner in which he said it left nothing further to be said.

FOOTNOTES

1. 143 Cal. 702.
2. Interview with Roscoe S. Gray.
3. Shuck, *History of the Bench and Bar of California* (1901), p. 704.
4. (June 7, 1928), Part II, 1.
5. 84 Cal. 433.

JOHN J. DE HAVEN

Fortieth Justice, January, 1891-January, 1895



John J. De Haven

Despite the frontier background of his younger years no man ever presided with more dignity in the courts of California than De Haven. His ideas of the decorum that should obtain in a court of justice were exalted. He succeeded Fox on the Court, and like him his road to the law was by way of the printer's trade and country newspaper work. He served successively as district attorney, state legislator (both houses), city attorney, judge of the superior court, and Congressman, before coming to the Supreme Court of California, and from there to the United States District Court. His was truly a career in the government.

John Jefferson De Haven was born in St. Joseph, Missouri, March 12, 1845, and was the son of Jacob and Elizabeth (Wells) De Haven. With a brother and sister, he was brought by his parents to California in 1849, the family settling in Sacramento. In 1853 they moved to Humboldt County, going by boat from San Francisco. "The stolid quietude of his father diverted the family from the rush to the north for the Trinity mines, and the family settled on a farm out of Eureka." "It was the day of the pioneer and rough and ready man—but the De Havens were not of this type."¹

De Haven received his elementary education in the public schools of Eureka, and at sixteen was apprenticed as a printer with the *Humboldt Times*. It was while he was employed here that he took up the study of law in the office of J. E. Weyman of Eureka. After three years he was admitted to the bar by the district court for Humboldt County, whereupon he entered the practice in Eureka. He reached his twenty-first birthday after passing the bar examination. He ran for district attorney the year he was admitted and was elected, serving in this position two years, 1867-1869. In 1869 he was elected to the Assembly and served through the eighteenth session of the Legislature. In 1871 he was elected a state Senator to represent Del Norte, Klamath, and Humboldt Counties, serving through the sessions of 1871-1872 and 1873-1874.

On June 24, 1872, De Haven married Miss Zernal Jane Ball.²

De Haven was a candidate for the constitutional convention in 1878, but defeated. He was city attorney for Eureka from 1878 to 1880. He was nominated by the Republicans for Congress in 1882, but in the election was defeated by Barclay Henley.

De Haven was elected judge of the superior court for Humboldt County in 1884, taking his place on the bench in January, 1885. One of the things which needed correcting at this time was the deportment of the bar in the courtroom. A practice of loud and abusive talking had grown up among some of the lawyers. One of the worst offenders was his former partner, J. D. H. Chamberlain. The story is told that Mr. Chamberlain while acting as attorney in a homicide case had not been engaged in the trial more than a few minutes when he began speaking in an unduly loud voice and using language unbecoming a lawyer in court. De Haven asked him to take his seat. "Mr. Chamberlain looked to the bench as his former partner, half smiled and continued to speak,"³ whereupon he was fined fifty dollars. "Mr. Chamberlain dropped in his seat in sheer astonishment." In the course of the day he was fined \$150, "accompanied by a threat of jail."⁴ From that time forward there was a change for the better in Humboldt's superior court."⁵

De Haven was nominated by acclamation for Congress in the Republican state convention in 1888, and elected. There were in California at that time six congressional districts. The congressmen elected

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from three of them were Joseph McKenna, W. W. Morrow, and De Haven, all later becoming federal judges, with McKenna a member of the Supreme Court of the United States. De Haven served in Congress until October 1, 1889, when he resigned. In 1890 he was nominated for the Supreme Court of California and elected, taking his place on this bench in January, 1891. He served out his term, ending in January, 1895. While serving only four years, he nevertheless made an excellent record. Considering his short service a large number of his cases have found representation in casebooks by the best scholars.

Upon leaving the Court De Haven took up the practice in San Francisco, becoming associated with S. C. Denson. He remained at the bar only a little over two years, when on June 17, 1897, he was appointed a judge of the United States District Court for the northern district of California by McKinley, with whom he had served in Congress.

The qualities that had characterized the presiding in his superior court found expression in the United States Court, and the dignity of his courtroom was "a subject of comment."⁶ It was a continuation of the "austere dignity"⁷ which had characterized his Humboldt court.

De Haven believed people accused of crime should be brought to speedy trial and openly criticised the United States District Attorney's office on one occasion in this regard. "It seems to me," he remarked, "that if there was enough evidence for the grand jury to indict, there was enough evidence to convict," and that it was not "supposed that the grand jury" would "return an indictment unless there" were "evidence enough to secure a conviction before a trial jury." "After an indictment has been found, the United States attorney's office should be ready to go to trial in an hour..."⁸

In 1905 appeared a front page dispatch from Washington to the effect that the Attorney General's office had expressed displeasure at the manner in which certain cases had been tried in De Haven's court. Two men accused of misappropriating government money had replaced the amounts alleged to have been misappropriated, and after several trials were acquitted. According to the newspaper report the Attorney General's office had found De Haven's instructions to the jury "confusing" and that it was

his fault and not the district attorney's that the men had not been convicted. This all gave rise to interesting speculations on the part of the people who were more or less informed of what had happened. They were curious as to what De Haven's reaction would be. "Judge De Haven," said one of the California Congressmen, "is not a man to sit idly by and allow any Attorney-General 3,000 miles away to write letters finding fault with instructions to juries." It was suggested that De Haven would take the matter up with President Roosevelt.⁹ In due course the Attorney General disclaimed all knowledge of the alleged criticism and sent a letter to De Haven which closed with the words: "Although an unfounded report of this kind is calculated to give me more discomfort than you, I venture to hope that it has not caused you any annoyance."¹⁰ The alleged criticism of De Haven was front page news while the disclaimer and apology was set out in a few brief words on an inside page as of such minor and secondary importance as scarcely to be noticed.

Upon moving to San Francisco in 1891 De Haven acquired a home on Octavia and Eddy Streets. He also acquired a twenty-five acre country home at Yountville.

Some years before he passed away De Haven became afflicted with a nervous disorder, greatly handicapping him in his work. On one occasion, in June, 1911, he was all ready to go on with the trial of a scheduled case, but had to adjourn court, whereupon he suffered a prolonged severe sick spell.¹¹

De Haven died of apoplexy in his Yountville home January 26, 1913. He was a little under sixty-eight at the time. He left surviving him his wife and two children, Jotham Jefferson and Sarah Louise. The funeral was under the direction of Bradford Leavitt of the Unitarian church. The burial took place at Mount Olivet Cemetery.

De Haven left an estate of something over \$60,000, which went to his wife, leaving it to her to provide for his children as her judgment should dictate.

De Haven has been spoken of as "a strikingly handsome man," "of commanding appearance and great dignity of character."¹² He was about six feet, three inches tall, well built, weighing about two hundred pounds. His chin beard was part of his personality. His son mentioned to the writer that he had

JOHN J. DE HAVEN

Fortieth Justice

never seen him without it. He was serious-minded from youth, "a serious youth without a childhood." "Calm at all times, he was not drawn into the rough life of his comrades. He did not smoke or drink at any time during his life"; "an antithesis of his environment." "He was a steady, systematic worker, forging ahead and not mingling with the boys of the town. In his early days he was known as a recluse, unaffable, unsocial and almost morbid. But he worked, studied and shaped his intellect."¹³ This may be in the nature of an extreme description. His son told the writer that he was anything but austere or severe in the home circle, where a warm and gentle nature characterized his life. Here a fine sense of humor also found expression. He was spoken of as a "fluent speaker," but did not have the best speaking voice, the same being of a somewhat high pitch. He made a point to impress his children not to do a great deal of talking unless they were informed and had something worthwhile to say. De Haven carried the impress of his parents' strong character upon him through life.

While De Haven attended the Unitarian church, he was not a member of any church. He belonged to the Odd Fellows Order, and was more or less active therein. One may gather that he participated actively

therein from the following anecdote. A chance acquaintance of De Haven's son asked him on learning that his name was De Haven if he was any relation to Judge De Haven. When told the judge was his father, he said, "I don't like him." His dislike grew out of his presenting a claim to his lodge. It was referred to De Haven who recommended against paying. The man took the matter to court, and losing there took it to the Supreme Court, where, who should he see sitting there with the other justices but De Haven.

FOOTNOTES

1. *S. F. Call* (Jan. 27, 1913).
2. *Ibid.*
3. *Ibid.*
4. *S. F. Call* (March 26, 1909).
5. *Ibid.*
6. *Ibid.*
7. *S. F. Call* (Jan. 27, 1913).
8. *S. F. Call* (Nov. 14, 1911).
9. *S. F. Examiner* (Nov. 30, 1905).
10. *S. F. Call* (Dec. 9, 1905).
11. *S. F. Call* (June 30, 1911).
12. *S. F. Call* (Dec. 25, 1890).
13. *S. F. Call* (Jan. 27, 1913).

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Charles H. Garoutte

To Charles Henry Garoutte goes the distinction of being the first justice of the Supreme Court born in California. The Court had been in existence forty-one years when he became a member in 1891. Notwithstanding the fact that his educational opportunities had not extended beyond those available in the rural, almost frontier, community in which he grew up, he nevertheless exhibited an aptitude in the law which has scarcely been excelled by any of the men who have served on the Court. His record establishes him as a jurist of a high order.

Garoutte was of French descent on his father's side and on his mother's English. His first paternal ancestor in America was Michael Garoutte, his great grandfather,² born near Versailles, who came from France about the time of the American Revolution, settling in New Jersey. He was a friend of Lafayette, and the latter visited him on several occasions as he made his trips to America. Both were good fencers and at times matched skills on these occasions.

Garoutte's father, Jeremiah M. (Jerry) Garoutte, a native of Ohio, accompanied by his brother William,

came to California overland from near South Bend, Indiana, in 1849. As his party was ascending a steep dugway near Donner Lake, the coupling which connected the oxen to the wagon broke, whereupon the "wagon started backward, struck a rock, careened and went over the bluff." "It would have been a tragedy," continued Garoutte's father, "but for the fact that the women had gotten out of the wagon a few minutes before."³ With it went most of their effects and two thousand pounds of provisions. They saved the oxen, and a horse which they were bringing across the country for some other people. Garoutte's father sold the oxen upon reaching Sacramento for \$360. He had planned to remain in Sacramento and go into the feed-stable business but was driven out by the flood of January, 1850. In 1853 he settled in western Yolo County, twelve miles west of Woodland, where he engaged in farming and stock-raising. The fall of that year he met Mary Jane Pedlar,⁴ who had come with her parents from Missouri the year before. They were married the following January. She was



Garoutte when younger

CHARLES H. GAROUTTE

Forty-First Justice,¹ January 1, 1891-January 1, 1903

seventeen and he was about twenty-eight. After their marriage they established their home on Cache Creek, near the present community of Madison. While they lived a considerable distance from any other settlement, one of the roads between Oregon and San Francisco passed their home and travelers frequently stopped there to rest and feed their animals. This in part made up for the isolation they would otherwise have experienced.

Here Garoutte was born October 15, 1854. He was the oldest of three children, the other two being Manfred M. and Eudora.⁵ Their's was a typical early day ranch home. None of the buildings are any longer in existence, but some of the oaks near which they stood may still be standing.

Garoutte's mother had two small brothers⁶ about the same age as her own boys, who by reason of their parents' death lived with the Garoutte family. They were treated exactly as her own. It was not until they got older that the Garoutte children awakened to the fact that they were their uncles rather than their brothers. As the term "boys" was used in the family it had reference to all four of them, and they were for all intents brothers, and remained so through the years. As they grew up each had his one, two, or even three dogs; a stock dog for herding, a hunting dog, and a hound for rabbit chasing. Besides this their sister had her dog or dogs. One could scarcely take a step about the Garoutte household without falling over a dog. The exploits of these dogs were joyfully recounted as the family got together in later years.

As the children grew up the family moved to Woodland so they might partake of the educational opportunities there. Here Garoutte attended Hesperian College, a school maintained by the Christian church. He was not a member of this church, however. He was recognized as a bright and promising student. He was especially gifted in speaking and declaiming. It has been said by those who heard him in some of his classroom efforts that they were worthy of one far older and more experienced than he was at that time.

He was an excellent speller, as was also his mother. On one occasion there was a public spelling match (the counterpart of the television quiz of a hundred years later) wherein he and his mother were lined up on opposite sides. In due course they spelled all others down, and were the only ones standing. Garoutte

was the first to misspell a word, whereupon his mother spelled it, and became the winner. While Garoutte would never admit it, his mother always insisted he had deliberately misspelled the word.⁷

When he was sixteen or seventeen he became a teacher in a little school four or five miles northeast of Woodland. Some sketches state that Garoutte taught as much as five years. This is not correct, however, as he taught only a year or so. On one occasion his father took him some clothing, and some candy for the children. As he approached the schoolhouse there was a great medley of voices emanating from the schoolroom. He tied up his horse and quietly slipped up to the window and peaked in. There before the school he found his son vigorously leading the children in a song, everyone off key. While Garoutte was a good speaker, he was not gifted in singing. His young uncles were good singers.

All through his youth Garoutte was a student. When he was not to be found, his mother nevertheless knew what he was doing. From this, however, it is not to be inferred he was a recluse.

Garoutte studied law by himself and in the office of Frank E. Baker in Woodland, and was admitted to the bar in 1876. Immediately thereafter he commenced the practice in Woodland. Years later, when he was a justice of the Supreme Court there was on one occasion a great parade down Market Street in San Francisco. His daughter Amy, then a girl of sixteen or seventeen, was the guest of someone whose office overlooked the street. As they were waiting for the parade an old gentleman came in and upon being introduced to "Judge Garoutte's daughter," remarked, "Oh, yes, I knew your father when he herded hogs with a law book under his arm." Garoutte's daughter was embarrassed at the remark, but later appreciated that it was about as fine a compliment as could be given her father. His first law partner was William Brewster Treadwell. This association continued for upwards of a year.

Soon after his admission he became a candidate for district attorney. His opponent was his old preceptor, Frank E. Baker, the incumbent. Baker had educated him too well. Garoutte won. He served two terms in this position, being re-elected in 1878. Upon leaving the district attorney's office he went into the law office of E. R. Bush, who had been recently

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elected judge of the superior court. In 1884 Garoutte became the judge of this court, having run against Judge Bush, the incumbent, and won. From all accounts these were both spirited elections.⁸ Garoutte was then thirty years of age, and probably the youngest superior court judge in the state. When the people of San Francisco spoke of Walter H. Levy as the youngest superior court judge in California the people of Yolo County pointed out that Garoutte was a year younger.

"Coward v. Spencer was the first one tried by Judge Garoutte, and on all sides we hear the new judge spoken of in terms of the highest commendation for the manner in which he conducted the proceedings in the case. The gentlemen of the bar without a dissenting voice expressed the highest satisfaction with Judge Garoutte."⁹ Some complicated cases were tried before him during his incumbency, some of them extending over weeks. He was not without some real experience as a trial judge when he came to the Supreme Court.

He served as judge the six years for which he was elected. As his term was drawing to a close he became a candidate for associate justice of the Supreme Court on both the Republican and American Party tickets. Three associate justices were being elected at this time, 1890, with Garoutte and Harrison running for twelve-year terms and De Haven for Temple's unexpired term which had been filled by Fox upon Temple's resignation until this election. Garoutte was at this time an active and popular member of the Native Sons of the Golden West, an organization with a great deal of influence in the state. His success in the election may in a degree be attributed to his popularity therein. He was thirty-six when he came to the Supreme Court.

He took his place on the Court in January, 1891. The Court's personnel at this time consisted of Beatty, Sharpstein, Paterson, McFarland, De Haven, Harrison, and himself.¹⁰

Garoutte aspired to the Chief Justiceship over Beatty as their terms were expiring (was he trying the same game which had worked so successfully against Baker and Bush?), but missed the nomination of his party by a few votes, Beatty, the veteran of many battles, winning out over him. Referring to Garoutte's aspirations the *San Francisco Call* of July 11, 1901, spoke of him as "a progressive young man, who would be a remarkably gifted lawyer if his

attainments in the law equalled his accomplishments as a politician." "Chief Justice Beatty," it continued, "is a fine lawyer, but knows as little about politics as Garoutte knows of law."¹¹ Garoutte undoubtedly understood a great deal about the ways of politics, but nothing could give a more erroneous impression than the appraisal made of him as an expounder of the law. Although Garoutte was a member of the Court only about half as long as Beatty, more of his opinions have been selected by casebook writers than have Beatty's.¹² This is mentioned, not to disparage Beatty, but rather to illustrate how misleading partisan newspaper comment can be, as well as to give Garoutte his just due. By the number of his opinions that have gotten into the leading casebooks he ranks as one of the first judges of the Court. While Garoutte missed the nomination for Chief Justice, there can be no question that he could have been nominated for associate justice had he been content with that.

Garoutte did not take his defeat so seriously that he could not joke about it. Sometime before the convention in which he lost out met he was invited to speak at the fourth semiannual dinner of the Los Angeles Bar Association. Lucien Shaw was at that time president and John D. Works first vice president. Both being absent, William J. Hunsaker officiated. This dinner took place after the convention.

Garoutte was most graciously received on this occasion. His introduction took place "amid a cockle-warming round of cheers and applause." He rose to the occasion and his speech was "distinctly" the "hit" of the evening.¹³ It was sprinkled with a fine quality of wit and humor and his serious remarks not uninteresting. Alluding to his defeat he observed: "When I first received the invitation to speak on this occasion, I declined. I did not give my reasons—they were personal. Perhaps it would be apropos to give my reason now. Before long I found myself running for office. Then it came over me that in view of the many courtesies extended the appellate court by this Bar Association, my duty was to accept. I did so, and went back to San Francisco to prepare my address for this occasion. If my recollection serves me well, the subject ran something like this: 'What I'll do when I'm Chief Justice.' I decided the theme would not be appropriate." (Laughter)

Among other things, after twelve years on the Supreme Court, Garoutte gave it as his opinion that

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oral arguments before the Court were not of great value. "... I wish to advise against oral arguments before the Appellate Court," he remarked. "Only exceptional cases, and, I might add, exceptional points, should be argued orally before the Supreme Court." "Nine-tenths of the lawyers can argue nine-tenths of the cases better by briefs. The time is long since passed when a good talker necessarily makes a good lawyer. Very few of the cases I have ever heard argued orally was I ready to pass upon at the conclusion.

"As an instance. A lawyer of the old school, or shall I say the quasi-old school, who believes in oral arguments, will appear and begin something like this: 'If the honorable court please, I would like to ask two hours extra time (in addition to the hour which the rules allow), in which to present this case. The importance of this action will not allow of making clear to your honorable body in the hour allotted.' The Chief Justice over-rules the petition, and the lawyer proceeds with his argument like this: 'If your honor please, for the edification of your honorable body I have classified my argument on the case under six heads, each of which is in four subdivisions.' Then he goes ahead and talks for fifty-nine minutes. Then he says: 'Now I have not touched upon the most important points in the case at all. In fact, the time has been so limited that I have discussed none of the points material to a decision of this case, etc., etc.' Then the Chief Justice informs the advocate that his time is up." (Anyway, this may be taken as an indication of how the justices feel about some of the arguments they hear.)

Continuing the report of the speech, the paper from which the above is quoted in part continued:

In like manner, and with equally telling stories from his fund of experience, Justice Garoutte made ridiculous other follies of attorneys in the higher court. He inveighed most strenuously against the custom with some lawyers of citing one hundred decisions, more or less remotely bearing upon a case, and demonstrated the futility and folly of such conduct. He said that five cases bearing directly upon the issue were sufficient in any case.

Perhaps Garoutte's most celebrated opinion was in the case of *Blythe v. Ayres*, 96 Cal. 532, involving conflict of laws. Here a resident of California had gone to England temporarily, where he cohabited with an unmarried English woman, who bore a child. Neither the mother nor the child ever came to America during the life of the man. During his life-

time, however, he frankly acknowledged the issue of this cohabitation as his child. The case holds that the law of California established the status of this child and that it was his lawful heir. Garoutte received letters of commendation from all over the world in connection with this opinion.

Upon leaving the Court in December, 1902, Garoutte took up practice in San Francisco in association with W. N. Goodwin.

Garoutte was offered the mayorship of San Francisco by the Republican leaders at least once. "But he will have none of it. He is out of politics forever, he says," ran one press account.¹⁴

He received consideration for the governorship at least once. "At present," went one account, "four candidates are in the fight to stay, at least until after the primaries. These four are Gage, Thomas Flint, Jr., E. B. Edson and George C. Pardee. Two dark horses are hidden away in back stalls. They are Frank H. Short of Fresno and Colonel Stone of this city. Short has declared himself out, but if Gage fails to obtain a majority Short will get into the race. Then there is a story floating around to the effect that if Gage is knocked out at the primaries or in the convention, Supreme Judge Charles H. Garoutte may be taken out of the fight for Chief Justice and given the nomination for Governor. This would give Chief Justice Beatty a clear field for renomination." "Judge Garoutte," it continued, "is a popular native son and it is figured that he would add strength to the State ticket if he were named for Governor. As far as his own views are concerned Judge Garoutte prefers to make the fight against Judge Beatty and gives no encouragement to those who have suggested that he be named head of the ticket."¹⁵

Garoutte's law office was destroyed in the fire and earthquake of 1906. He was in Los Angeles at the time. The justices of the Supreme Court were also down there, but returned to San Francisco immediately in a special train. Garoutte accompanied them. In 1907 he went to Goldfield, Nevada, where he represented some eastern mining interests for about a year. He did not find his work and life here the most congenial to his tastes, and after a year returned to his practice in San Francisco, establishing his home in Berkeley. While he handled some important cases he did not derive the satisfaction from the practice which he had in his judicial work. He did not make

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the name for himself at the bar which he had as an appellate judge. It may be that he made a mistake in eliminating himself from the bench by seeking the chief justiceship.

Sometime after he returned from Nevada he was appointed bank commissioner, so serving until a short time before his death.

Garoutte died after a lingering illness of several months in Berkeley, July 17, 1910, leaving surviving him his wife, who prior to their marriage was Clara Rebecca Hitchcock of Stockton, and their two daughters Amy and Grace, later respectively Mrs. Carl Vesper and Mrs. Richard H. Hovey. Garoutte's widow died on her ninety-sixth birthday in Berkeley, June 16, 1949.

Garoutte's funeral services, held July 20, were simple, attended only by the family and close friends, and under the direction of Rev. C. Cashin of the Christian Science church, to which Garoutte's family and sister belonged, though Garoutte was never a member of any church. The pallbearers were old fraternal friends. His body was cremated and the ashes privately scattered.

Garoutte was a large man, six feet, one-half inch tall, and weighing around two hundred and fifteen pounds. His hair was light brown, and his eyes blue-gray. He resembled his mother in appearance, and as he grew up was sometimes taken for her brother. There were only eighteen years between them. When he first became a justice he began taking on weight, and thereupon concluded to take up a systematic course of exercise to keep it down. Pursuant thereto he bought a bicycle, and each morning rode it through Golden Gate Park to the ocean, and back to his house, which was located near the Panhandle. After a month of faithful performance he again stepped on the scales and found that he had gained five pounds. He then gave it up, as it only tended to increase his appetite. Garoutte was rather handsome, and in full dress made a striking figure.

He was of the type that gets along well with his fellows. He had a great deal of fun all through his life. As a youngster he was on hand to do his part to bring a prank to a successful conclusion. One moonlight evening he dressed as a ghost and climbed a large tree whose branches overhung a well frequented path. Some of the boys then led some girls by on the pretext that they had something interesting to show

them. As they approached the tree he began to moan and stir his wings, and when the girls were nearly under him dropped from the tree, flapping the white sheets and continuing his moanings, with the effect wished by the boys.

While Garoutte was a member of the Supreme Court he managed to work in two extended trips, one to the Orient in the late nineties, and one to Europe during the summer of 1902, his last year on the court. He had intended to go to Honolulu only his first trip, but on the boat became acquainted with two English-Jew businessmen whom he came to like a great deal, who urged him to go on to the Orient. He felt he hardly had the time, as he could not be out of the state more than sixty days, and also that it would be an extravagance on his part. Unsolicited they provided him with the additional money with the understanding that he could pay them at his convenience. He thereupon went to Japan, his family accompanying him. This trip had been planned primarily for Garoutte's health. A short time before he had suffered all but a nervous breakdown. On the trip he was so nervous he could not sit still long enough to enable the barber to shave him, and shaving himself was out of the question. The barber would take two or three strokes with his razor, whereupon Garoutte would walk around the room for a minute or two, and then the barber would again get in a couple of strokes, and so on until the job was done. Fortunately he had a full recovery.

His trip to Europe commenced in May, with his wife and daughters accompanying him this time also. There is a good account thereof on record as he wrote it up and it was published.¹⁶ Only a very small sample of his very readable report can be given here. A statement of the places visited makes it clear he got a good view of England and most of Europe, many historic places, the galleries, gardens, museums, palaces, etc.

Garoutte states he developed the ability to see things "at a gallop." He observed most of the pictures seen in Amsterdam were Van Dyck's, Rembrandt's, and Rubens'. "I think," he wrote, "Mr. Peter Paul Rubens must have acquired the habit of painting pictures upon the same plan that I distributed tips in my travels—using both hands at the same time. I believe I saw 1000 pictures by Rubens, and am told I did not see even half of his handiwork. He surely was no eight-hour man, or, if so, he must

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have worked over-time. It is certain he never went on a strike. When you consider the number of pictures he painted in addition to the fact that he married two or three wives in the meantime, Peter Paul Rubens must have been a very busy man."

He was impressed with the Passion Play at Oberammergau, with its more than six hundred village players, and the strides being made in Berlin in city building. In Paris he checked a little on his genealogy and at the Exposition there experienced his first automobile ride. He arrived back in California on the fifty-ninth day. It was a source of anxiety to his family and friends until he was back because he never made any allowances for misconnections or mishaps.

Needless to say Garoutte found much happiness within his family circle. He was proud of his charming and accomplished daughters and they were devoted to him.

Garoutte was a Mason and an Odd Fellow, as well as a member of the Native Sons of the Golden West. In 1887 he was grand vice president, and in 1888 president of the last named order. He was a charter member of the Woodland Parlor and retained his affiliation there through life. In a letter from Garoutte dated Berkeley, May 28, 1910, in response to an invitation to be present at the convention of the Native Sons at Tahoe he wrote in part:

... No invitation I have received in years has given me the pleasure this one has. But, alas! I cannot be with you. For more than ten months I have not left my house of an evening. My poor health has forbidden it.

Upon reading your invitation I am filled with a thousand recollections of the past, and tears will come ...

For thirty-five years my heart has been close to our Order. Whatever my success in life, I attribute it largely to the true and tried friendships formed with "the boys" of the Order in its early days. When I needed help it seemed to me they went forward to the firing line in solid array.

P.S.—I shall try to be with you next year. Like John Paul Jones, I shall not give up the ship as long as I can feel a plank under my feet.

Garoutte's greatness lies in the way he qualified himself for the bar, the class of opinions he wrote, and the hold he established on the affections of men. Not only was he democratic in his ways, but there was a warmth about his personality that drew men to him. He was one of the Court's several justices whose background was definitely agricultural. He referred to himself as a son of agriculture. "One day when he was on a header wagon working as best

he could, he was called to take charge of his first school ..."¹⁸

He loved the beauties of nature and was partial to flowers. There is preserved in his father's scrapbook a composition he wrote while in the grades relating to flowers. Of all the flowers, the rose was his favorite. In later years he frequently spoke in the interest of flower projects.

FOOTNOTES

1. Designated forty-first to make the chronology regular, as three men came to the Court the same time, De Haven, Garoutte, and Harrison.

2. The line is Michael Garoutte, James Smith Garoutte, Jeremiah M. Garoutte, Garoutte.

3. Bert F. Hews, "A Few Minutes Chat with One of Our Neighbors," *The Sacramento Star*. This clipping appears in Michael M. Garoutte's scrapbook, but the date is cut off. A clipping from *The Home Alliance*, a little Woodland paper of July 6, 1916, refers to the article in the *Star* as of recent date. The *Star* spoke of Michael M. Garoutte as past ninety.

4. Her parents were Jonah and Sarah (Paul) Pedlar. Jonah Pedlar was born in England.

5. Well known to Californians of her day by reason of her service for thirty-four years in the state library, Sacramento.

6. Alfred Joel and Franklin August Pedlar.

7. Garoutte was an unusually rapid reader. In his prime those seeing him read were unable to believe he was really reading as rapidly as his turning the pages would indicate. On one occasion his sister placed her hand over a page on which his eyes had rested but a moment or two, and asked him to give her the contents of the page. Without hesitation he did so. Upon checking the page herself she found he had accurately and fully given the contents.

8. In 1936 the writer chanced to meet an old resident who had lived in Yolo County continuously since the late sixties, and asked him if he had known Garoutte, to which he replied that he had known him from boyhood and had voted for him at the time he was elected the judge of Yolo County. "In those days," he volunteered, "they used to buy votes—both sides." He stated the Bank of Woodland kept a bucket of gold coins near the "cashier" (teller) and as the customer completed his business and was leaving he would reach into the bucket and hand him a ten or twenty dollar gold piece. It was understood that Garoutte was the bank's candidate. Regardless of the truth of this story, admittedly a good one, it no doubt helped Garoutte to have the bank behind him.

9. Quoted from a clipping in Jeremiah M. Garoutte's scrapbook, reading as follows: "We clip the above complimentary notice from the Woodland Mail of the 9th, and will with pleasure add that we have known Judge Garoutte from boyhood, and testify of his ability as a lawyer, his integrity and honesty as a man." The name and date of the paper is cut away, but it must have been in 1885, being his first important case. This scrapbook was in the possession of Eudora Garoutte in 1940 when the writer had the use of it. Miss Garoutte is since deceased. The writer has not run down what became of this book on Miss Garoutte's death, and is not sure he checked for accuracy such copying therefrom as

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he made. The quotations herein are therefore subject to any slight errors he may have made in copying.

10. The following changes took place in the Court's personnel the period Garoutte served: Sharpstein died in December, 1892, whereupon Fitzgerald was appointed until the next election in 1894; Paterson resigned early in 1894, whereupon Van Fleet was appointed in April; Henshaw was elected in 1894 to succeed Fitzgerald; in 1898 Van Dyke was elected to succeed Van Fleet.

11. P. 1, col. 5.

12. Garoutte's opinions appear in some 20 different case-books up to 1936.

13. *S. F. Chronicle* (Jan., 1903).

14. Jeremiah M. Garoutte scrapbook.

15. Clipping Jeremiah M. Garoutte scrapbook. The news item is entitled "Garoutte Declines Chance to Run for Mayor." That it was after his service on the Court appears from the allusion of his completion of a twelve-year term on the Court.

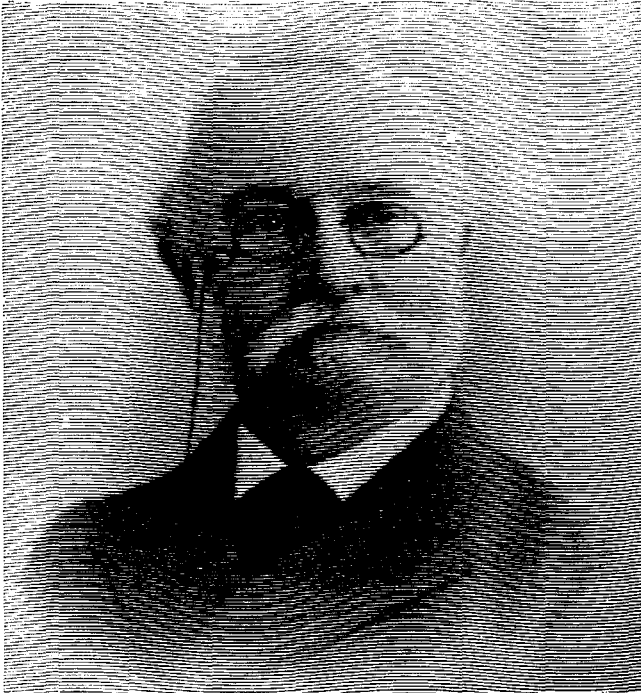
16. *Ibid.* From context it is clear it was sometime in 1902.

17. Jeremiah M. Garoutte's scrapbook, believed to be from the *S. F. Chronicle*, the latter part of 1902.

18. Jeremiah M. Garoutte scrapbook.

RALPH C. HARRISON

Forty-Second Justice, January, 1891-January, 1903¹



Ralph Chandler Harrison

No man who has been a justice of the Supreme Court of California was more a consistent lawyer through and through than Ralph Chandler Harrison. His life proves that this is possible without surrendering oneself completely to the jealous mistress, or, should it be concluded that mixing in a certain amount of attainment outside of the law may well make for the wisdom which is part and parcel of the stock in trade of the complete lawyer and judge! While public spirited in a high degree this did not find expression in politics in any form. Ignoring this department, not so much by reason of any contempt therefor as a greater interest in other things, he was repeatedly slapped back when political preferment was involved. His life illustrates, however, how in the end solid works will not be gained. He was not a son of agriculture. He mingled no business or vocational projects with his legal efforts. His disposition to further the public weal found expression more as a member of a library board, or committee thereof, as a college trustee, as a member of a professional or learned society, as a member of a board of freeholders, or the like. He lived much in the world of the finest thinking and thought of the ages. This accounts for his love of books and other products of the mind. Art fascinated him and he

gathered together some fine etchings of his own. He was meticulous in everything he undertook and discharged every assignment with finesse. While his tastes and methods were those of the scholar, close and exacting mental work did not preclude him mingling socially and informally with mankind in a way to place him on intimate and friendly terms with a great many people. He was not spared the rough treatment which fate sometimes has a way of dealing out. This only brought out the more his mettle and helped to demonstrate his truly superior qualities. With Stephen J. Field, whom he counted one of his best personal friends, and Jeremiah F. Sullivan, he was one of the three Connecticut-born men to come to the Supreme Court of California.

Harrison was born in Cornwall Bridge on the Housatonic in northwestern Connecticut, October 22, 1831, and was the son of Myron C. and Charlotte E. (Calhoun) Harrison. He was of English stock. His first progenitor in America on his father's side came to this country in 1644, settling first in Branford, Connecticut. Later they went to New Jersey, but in due course settled in Litchfield County, Connecticut. There are today many Harrisons in this county. Cornwall Bridge lies a short distance down the river from Cornwall, and was a small community in Harrison's day, as it is today.

Harrison had the advantage of a good elementary education and about 1850 entered Wesleyan University at Middletown, Connecticut, where he graduated in 1853 with the A.B. degree. Oscar L. Shafter and John Currey, who served on the Court before him, also attended this university. Upon his graduation Harrison became a teacher at Armenia Seminary near Poughkeepsie, New York. While teaching he was able to continue his studies at Wesleyan University, and in 1856 received the master's degree. He had gone in for a classical education and at the Armenia Seminary taught mathematics, ancient languages, and rhetoric.

For all that is known Harrison maintained his legal residence in Cornwall Bridge during these years, and in 1857 served a term in the house of the Connecticut Legislature. It was in 1857 also that he went to Albany, New York, where he entered the Albany Law School. This school carried considerable prestige for a number of years. A number of men who have become justices of the Supreme Court of California received their legal training there. In this regard Silas

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W. Sanderson and A. Van Rennselaer Paterson may be mentioned. Harrison received the LL.B. degree from this institution in 1859, and was immediately thereafter admitted to practice by "the Supreme Court"² of New York. It does not appear that he did any practicing in New York, however.

Among Harrison's classmates at the Albany Law School was David D. Colton. Colton, born in Maine, went to California during the gold rush, where he became sheriff of Siskiyou County. He was later to attain fame as an associate of "The Big Four," Stanford, Huntington, Hopkins, and Crocker, builders of the Central Pacific. Colton persuaded Harrison to come to California, where it was supposed that they would become partners in the practice at Yreka. From the fact that they planned to practice in this remote mountain county it would not appear that they were entertaining any extravagant ideas at this time of what they were going to do in the law.

Harrison came to California in 1859 by way of the Isthmus. When they reached San Francisco, however, they concluded to try their luck there, and opened an office, the association becoming known as Colton & Harrison. Colton immediately began addressing himself to politics and business, permitting these to more and more crowd out the law as time went by. "Why sit around waiting for a \$50 fee," he said, "when a smart trader can get out and make \$500 in half the time."³ Harrison on the other hand stuck close to the law and concentrated his energies on the practice. While they continued as partners until about 1866, Harrison undoubtedly looked after the great part of the practice details the last years of their association. It may well be, however, that Colton's activities were not unimportant in bringing business into their office.

In 1865 Harrison married Juliet Lathrop Waite. She was one of the twelve or thirteen children of Charles V. and Katherine Waite, and had been born at St. Charles, Illinois. Her folks had come originally from Paulet, Vermont. Her brother, Charles, had been appointed one of the first judges of Utah Territory and she had accompanied him as far as Salt Lake City and came on from there to California about 1861. It was in California that Harrison first met her. By this marriage were born three sons, Richard C., Philip J., and Robert W., all three of whom followed in the footsteps of their father and became lawyers. After completing his academic and law work at Har-

vard, Philip commenced practice at San Francisco in 1894, becoming connected with Rodgers & Paterson, Paterson being A. Van R. Paterson, at one time a justice of the Supreme Court of California. As he was getting started in a good way he contracted pneumonia, and passed away in 1896. Richard C., and Robert W., the latter many years in the California Attorney General's office, and now practicing law in San Francisco, became prominent members of the San Francisco Bar. All three of Harrison's sons were educated at Harvard.

In 1867 Harrison joined John R. Jarboe in the practice, the association becoming known as Jarboe & Harrison. Jarboe was in tastes and methods a man much like Harrison. He had come to California after graduating from Yale with the intention of opening an educational institution, but finding it inadvisable to put his plans into execution at that time, went into the law instead. Though spare and frail, and not always enjoying the best health, he nevertheless did a great volume of work through the years. The quality of the work done by this firm was such as to win for them the highest respect in all legal circles. Jarboe seldom if ever appeared in court but looked after the office side of the practice. Harrison did the court work. Cornelius P. Robinson joined them for a year or two about 1871, whereupon the association became known as Jarboe, Harrison & Robinson. In 1887 William S. Goodfellow joined them, the firm then becoming Jarboe, Harrison & Goodfellow. Robert H. Countryman, who became a partner of Harrison years later when the latter left the Supreme Court, was a clerk in their office during these years. This firm became one of the best known in the state and handled a great deal of important business. William G. Fair was one of their clients. Mr. Goodfellow drew his famous will, certain provisions of which were held to be invalid by the Supreme Court, after considerable doubt as to what its final decision would be. Harrison had been counsel for Claus Spreckels and his interests for years, when his son, A. B. Spreckels invaded the *Chronicle* offices and seriously wounded M. H. deYoung, the proprietor of the *Chronicle* in 1885. The Spreckels came to Harrison, but not being a criminal lawyer he remained in the background, giving them, nevertheless, the benefit of his best advice and counsel. The *Chronicle* never forgave him for this. Harrison continued on close terms with the Spreckels sons after the death of the father, and when the reformers were looking for someone to

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make mayor to help clear San Francisco of the Ruef-Schmitz graft government years later, Rudolph Spreckels, working with James D. Phelan and Fremont Older, came to Harrison and urged him to run for mayor. After counseling with his sons, Harrison declined to become a candidate.

While Harrison did not go in for politics, he nevertheless was not without political backing in the Republican convention which met in Sacramento August 12, 1890, and was nominated for an associate justice to fill one of the twelve-year terms. Four vacancies were occurring in the Court at this time, the Chief Justiceship, a short term, comprising the unexpired portion of Temple's term, which had been filled until this election by Fox, and two twelve-year terms, commencing upon the expiration of Thornton's, and that part of McKinstry's term, which had been filled its last two years by Works. In the election that followed Beatty, De Haven, Garoutte, and Harrison were elected. Harrison had been at the bar thirty years when he came to the Court. He had had no previous judicial experience.

The personnel of the Court when Harrison became a member in January consisted of Beatty, Sharpstein, Paterson, McFarland, De Haven, Garoutte, and himself. A number of changes took place in the Court's personnel the twelve years he served. Sharpstein died in December, 1892, and Fitzgerald was appointed in his place the following February. Paterson resigned in April, 1894, whereupon Van Fleet was appointed. Henshaw was elected to succeed De Haven in 1894, and Temple to succeed Fitzgerald. Van Dyke was elected to succeed Van Fleet in 1898. Temple died a few days before Harrison's term expired, and shortly after he left the bench in 1903 Lorigan was appointed in his place.

Harrison developed into one of the strongest judges the Court has had. "Crystalline clearness," "no thinness, no sloppiness, no ambiguity or obscurities," are terms which have been applied to his opinions. (However, growth in the law often arises when opinions are not too crystalline clear, leaving an opening for such construction as new situations call for.) Some of them have been referred to as "landmarks," and those not so qualifying as nevertheless "masterly."⁴

While these expressions may suggest extravagance of statement, the fact remains that more than a score of his opinions appear in casebooks prepared by legal

scholars from many American law schools, some of them among the first names in legal scholarship. That these cases are not restricted to any particular branch of the law, but cover a wide range, is apparent when it is mentioned they appear in compilations relating to administrative law, bailments and carriers, practice and pleading, trial and appellate practice, equity jurisdiction, trusts, contracts, corporations, water rights, damages, property, insurance, etc. To have a single opinion in a casebook by men like Samuel Williston, Jeremiah Smith, Edward H. Warren, George P. Costigan, Frank J. Goodnow, Harry A. Bigelow, and Joseph Walter Bingham, representing Harvard, Northwestern, University of California, Columbia, University of Chicago, and Stanford would alone be a distinction. Harrison began producing this class of opinions upon first going on the Court and continued to do so to the last.

Harrison liked judicial work and deserved to be elected for another term. His friends in San Francisco undertook to bring about his nomination in the Republican convention in Sacramento in 1902. Several of the leaders of the San Francisco delegation, which included Robert H. Countryman, his former understudy, and Abraham Ruef, not yet the notorious Ruef he was a few years later to become, worked for him. However, William F. Herrin of the Southern Pacific did not like Harrison and backed Judge J. C. B. Hebbard of the superior court at San Francisco, famous as the trial judge in the Hale and Norcross silver mining case, acknowledged to have been a splendid piece of judicial work. To prevent his nomination the Harrison group joined in backing Angellotti, who with Shaw, were nominated to succeed Harrison and Garoutte. It was accepted that Shaw could have been nominated without Harrison's supporters, but Angellotti probably could not have been. Garoutte had aspired to the nomination for Chief Justice but he could not beat Beatty. Angellotti and Shaw were both elected. Harrison and Garoutte therefore left the Court together as well as having come to it at the same time. Garoutte, Angellotti, and Shaw, like Harrison, were men of the highest ability.

Upon leaving the Court in January, 1903, Harrison again took up the practice in San Francisco, becoming associated with Countryman, the association becoming known as Harrison & Countryman. His stay at the bar was to be of brief duration only

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as he was appointed a Supreme Court commissioner in 1904, making him for all intents and purposes once more a member of the Court. This appointment gives an indication of the estimation in which he was held by the justices of the Court, as the appointment was made by the Court itself. He continued to produce the same kind of opinions that he had as a justice.

Harrison served as a commissioner until 1905, when he was appointed the presiding justice of the newly created district court of appeal in the first of the three districts, to serve until some one could be elected at the next election. With his associates, J. A. Cooper and S. P. Hall, he had the honor of organizing this court in the first district. As the election drew near he again deserved to be nominated to succeed himself, but this was not to be. The Republican convention this year met in Santa Cruz. It was in a great degree dominated by Abe Ruef. This time he was not in favor of Harrison, but backed James L. Gallagher of the San Francisco Board of Supervisors for the place. Carroll Cook, a judge of the superior court in San Francisco, won the nomination of the Republicans for Harrison's place. J. A. Cooper won the Democratic nomination and won in the election, succeeding Harrison as the presiding justice. Upon leaving the district court of appeal in January, 1907, Harrison again took up the practice in San Francisco, this time becoming associated with his son Richard C. His son Robert W. was also associated with him for a period. This firm became known as Harrison & Harrison and continued until Harrison's death in 1918.

Harrison's wife died shortly before he became a member of the Supreme Court, in 1890. In 1892 he married Ella Spencer Reid, a niece of Whitelaw Reid, famous editor of the *New York Tribune*, and one time American Ambassador to the Court of St. James. The wedding took place at Ophir Farm, Whitelaw Reid's home near White Plains, New York. There were no children by this marriage.

Referring more specifically to Harrison's public service outside of the Court, it may be mentioned that he became a charter member of the San Francisco Bar Association, organized in 1872, and served for a period as its treasurer. In 1874 he became an honorary member of the California Academy of Science. In 1880 he became a member of the board of freeholders elected to frame a new charter for San Francisco. In 1886 he was elected to a similar posi-

tion, serving this time as the president of the board. In 1884 he became a trustee of the San Francisco Law Library, and a trustee of Hastings College of the Law. The following year, 1887, he was appointed a trustee of the San Francisco Public Library, in which position he served until the time of his death some thirty-one years. During the whole of this time he was a member of the book committee, serving many years as its chairman. It has been said by the highest authority that "no place could have been better fitted to his knowledge and talents" and that he "gave unstintedly to the duties of this office."⁵ He was a member of the Geographical Society of the Pacific, and in 1892 served as its vice president.

He was a member of a number of social clubs. He became a member of the Bohemian Club at the time of its organization in 1872 and at the time of his death was its senior member. It was here that he probably cut his biggest social figure. His popularity increased with the years, and as time went by he was not only liked but beloved by old and young. As a Bohemian he gave full expression to the congenial and friendly side of his nature. He belonged to the Pacific and Union Clubs, and when they combined, to the Pacific Union Club. Being a good Republican he also belonged to the Union League Club of San Francisco. He was also a member of the Commonwealth Club.

Harrison belonged to no fraternal order of any kind. In this he was unlike many of the men who have been justices of the Supreme Court, the greater part of them having been affiliated with some fraternal organization. However, Harrison was not without some company in this respect, a few others having never affiliated with any fraternal order. Harrison had been brought up as a Methodist, but as he grew up affiliated with no particular church organization.

As suggested, he was widely read. He is said to have favored history and related subjects. He owned one of the finest private libraries in San Francisco, collected over the years with great pains. This and the collecting of rare engravings constituted his principal hobby. It was a hard blow to him when these were destroyed in the fire of 1906. He did not grieve unduly over something he could do nothing about, "and looked upon this destruction like a Roman of old, with no lamentation that betrayed the slightest weakness."⁶ After Harrison passed away his wife was instrumental in establishing the Ralph Chandler

RALPH C. HARRISON
Forty-Second Justice

Harrison Library at Carmel, California, in his honor. Such books as he collected after the fire were given to this library. Fond as he was of books, no more appropriate memorial could have been established in honor of his name. This library is one of the fine libraries of the state.

Harrison passed away in San Francisco July 18, 1918, in his eighty-seventh year. He left surviving him his wife and sons Richard C. and Robert W. His funeral was private, and his remains cremated.

As a judge, Harrison had "no sympathy" with any "popular demand"⁷ which did not take all the facts into consideration. "He hewed close to the line, and deemed the legislature and not the courts the one to change the rule."

Harrison lived a more than usually rounded and balanced life. As was said in the Supreme Court shortly after his death, that while "he was a lawyer from the crown of his head to the soles of his feet," he was nevertheless "not a lawyer and nothing else,"⁸ as the record of his life well bears out. He was about everything that any man might well like to be. Dignified, at the same time he was human and warm-hearted. Exacting of himself, he was nevertheless indulgent with others. With much to be proud of in high achievement, he was still gentle, modest, and

without conceit. While the superlative often detracts, it is nevertheless difficult to actually recount his virtues and accomplishments without it appearing that one is engaging in the superlative.

In personal appearance Harrison was an average sized man weighing about one hundred and sixty-five pounds, about five feet eight or nine inches tall. He was dark complexioned with brown eyes. For many years, including his years as a judge, he wore mutton chop whiskers. His last years, however, he wore only a mustache.

FOOTNOTES

1. Harrison was not technically the forty-second man to come to the Court, for the reason that he, Charles H. Garoutte and John J. De Haven came to the Court at the same time. To keep the chronology in these sketches regular, De Haven has been arbitrarily designated as the fortieth man to come to the Court, Garoutte as the forty-first and Harrison as the forty-second.

2. Shuck, *History of the Bench and Bar of California* (1901), p. 662.

3. Oscar Lewis, *The Big Four* (1938), p. 286.

4. 176 Cal. 812.

5. Edward Robeson Taylor, 176 Cal. 813.

6. *Ibid.*

7. *Ibid.*

8. *Ibid.*

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William Francis Fitzgerald

William Francis Fitzgerald was somewhat of a rolling stone. Born in Mississippi, he spent his early youth and received his elementary education there; then to Kentucky for his secondary education, which was terminated by the outbreak of the Civil War; after the war back to Mississippi, where he commenced his legal career as a Republican in the trying Reconstruction years following the war. After a creditable showing there, federal patronage took him to Arizona, parts of which were, at that time, to a great extent untamed frontiers. With a new administration, and removed from office, he followed the crowd to Los Angeles; then to San Francisco; then back to Los Angeles, where he consolidated in a high degree his place in the community. As the infirmities of age set in he went to Montana, where he closed his career.

Fitzgerald was born in Jackson, Mississippi, February 7, 1846. From the fact that it was the favorable impression he made as a newsboy in Jackson upon a generous person of means that enabled him to complete his education, it may be gathered he came from

a family of moderate if not humble circumstances. However, his earliest education was received at a private school. At the age of twelve he entered St. Mary's College, at St. Mary's, Marion County, Kentucky, that is to say, in 1858 or 1859. He attended this institution until the spring of 1861, when at fifteen he became a soldier in the Confederate Army. His daring and bravery were so pronounced that they bordered on the reckless. Among the military encounters in which he took part was the first attack at Shiloh. On the battlefield while suffering from a wound through the lungs, he was promoted for gallantry in action to the rank of lieutenant.

After the war Fitzgerald studied law in Jackson, and was admitted to the bar by the Supreme Court of Mississippi February 18, 1868.¹ He thereupon took up the practice there, becoming associated soon thereafter with Marion Smith, son of Cotesworth Pinkney Smith, Chief Justice of Mississippi from 1851 to 1862. He was twice elected city attorney of Jackson, and after that for seven years was district attorney for the judicial district embracing Jackson and Vicksburg, one of the most important as well as lawless areas of the state. That his courage and bravery did not desert him upon leaving the army is borne out by the fact that while he was district attorney two men, out on bail on charges of lynching and burning a Negro, attacked him. In the encounter Fitzgerald killed them both, although he himself was seriously wounded in the encounter.

In 1881 he was the Republican Party nominee for Attorney General. Although also indorsed by the Greenback and Independent Democratic Parties and running well ahead of his ticket, he was defeated.

In 1883 as the acknowledged leader of the Republican Party in Mississippi he became the Republican candidate for United States Senator, opposing L. Q. C. Lamar, the incumbent, a man of prominence and influence. Although he had no chance of winning, the nomination serves to show his standing with the segment of the state which chose to accept the issues resolved by the Civil War, and to make the most of an admittedly trying situation. This same year he attended a convention in Washington, D. C., of the Natural Mississippi River Improvement organization. While in Washington he was appointed by President Arthur a judge of the Territorial Supreme Court of Arizona. He thereupon went to Tucson, where he served in this capacity some two years.

WILLIAM F. FITZGERALD

Forty-Third Justice, January 2, 1893-January 7, 1895

Cleveland's election as President was the occasion of his leaving the court. Fitzgerald did not take this shift philosophically, and the rest of his life greatly disliked Cleveland.

As he was retiring from the Court, what had been a considerable mining boom in Arizona was ending. Numerous people who had been attracted there by reason of the abundance of business to which this gave rise (many of them from California), were departing the state. Of these was James A. Anderson, who had become one of Fitzgerald's best friends. Fitzgerald and he came to California together. Fitzgerald at first took up the practice of law in Los Angeles in association with Charles Silent and S. O. Houghton, both originally from San Jose. After a year or so he joined James A. Anderson and his son, James A. Anderson, Jr., the association becoming known as Anderson, Fitzgerald and Anderson. They continued in the practice together about five years, when in 1891 Fitzgerald was appointed a commissioner of the Supreme Court of California. Anderson had two other sons who later became associated with him in the practice, William H. and C. V.

Fitzgerald had tasted considerable success these five years in Los Angeles. He was one of the group of lawyers who in 1888 reorganized the Los Angeles Bar Association, which had become defunct in the early 1880's. He became very active in the association, serving on many committees and being one of its trustees in 1890.² He made some good business connections. For a time he was chairman of the board of directors of the chamber of commerce.

In passing, it may be mentioned that James A. Anderson, Sr., matured into one of the most honored members of the bar in Los Angeles. In 1899 he was given a banquet by the Los Angeles Bar on the fiftieth anniversary of his admission. A number of distinguished men had a part on the program, including Stephen M. White, John D. Works, and Lucien Shaw, the latter at that time a judge of the superior court. Anderson was at that time seventy-five and going strong. He had been born in North Carolina; gone to Tennessee; after four years in the Confederate Army and several years of practice in Memphis, went to Texas; and from there to Tucson.

Fitzgerald's appointment as a commissioner of the Supreme Court of California would indicate that he was held in high regard as a lawyer, as the court itself

selected the commissioners. Fitzgerald served in this position until May, 1892, when he resigned and took up the practice of law in San Francisco, where he became associated with M. M. Estee and John H. Miller, the association being known as Estee, Fitzgerald & Miller. Soon thereafter he was elected chairman of the Republican state central committee without his knowledge or consent. He resigned shortly thereafter by reason of pressure of business.

He did not remain at the bar long, however, as on January 2, 1893, he was appointed by Governor Markham as a justice of the Supreme Court of California to take the place of Justice J. R. Sharpstein, who had died. When Fitzgerald became a member of the court Beatty was the Chief Justice, with associate justices De Haven, Paterson, McFarland, Garoutte, and Harrison. There was but a single change in the court during the period Fitzgerald served. Van Fleet took Paterson's place in 1894.

In twenty-four months on the Supreme Court he authored only thirty-two opinions which apparently were distinguished only by their brevity. None of them assumed great importance as expositions of the law. This was the least number of opinions written by any then member of the court. Although at this time a large number of the court's opinions were by "The Court" or by the commissioners (there were five commissioners, each receiving the same salary as justices of the Court received), the other members of the Court were quite prolific of opinions. Chief Justice Beatty seemed especially productive, not only of majority opinions but of concurring and dissenting opinions.

Fitzgerald's term closed in 1894. He did not seek election to succeed himself, but sought instead the post of Attorney General, and was elected. His former law partner Estee was a candidate for Governor in the same election, but was defeated by James H. Budd.

As his term as Attorney General was coming to a close in 1899, he ran for city attorney of San Francisco, but was defeated by some three hundred votes by Franklin K. Lane, later Secretary of the Interior in President Woodrow Wilson's cabinet.

When his term as Attorney General expired, he again took up the practice of law in San Francisco, practicing in a semipartnership with William H. Anderson. The latter had been a law clerk in Fitz-

THE CALIFORNIA JUSTICES

gerald's office when he practiced with Estee and Miller. When Fitzgerald became Attorney General he appointed him one of his assistants.

After a few months in San Francisco Fitzgerald in 1899 was appointed by Governor Gage a judge of the superior court in Los Angeles. He thereupon returned to Los Angeles. He desired to succeed himself, when his term expired in 1903, but did not win the nomination of his party.

Upon retiring from the superior court he again took up the practice in Los Angeles. Although he did not become a partner with James A. Anderson Senior and Junior, and William H. and C. V. Anderson, he nevertheless maintained his offices with them, and they were associated in some of the most important litigation which passed through these offices.

One of Fitzgerald's best friends in California was Harrison Gray Otis, publisher of the *Los Angeles Times*. They worked hand in glove to bring about Cleveland's defeat when he ran the second time. They decided to capitalize on the Anglophobia of which America was suffering an attack at that time. To accomplish this they had a hand in having a naturalized British lady write a letter to the Ambassador of Great Britain, Lord Sackville-West, asking his advice on how to vote. He indorsed Cleveland. This indorsement was published so late that Cleveland and his supporters had no chance to overcome its injurious effect in the campaign. Soon thereafter the government of Great Britain was advised that Lord Sackville-West was no longer acceptable as Great Britain's representative to the United States.

When Fitzgerald took up the practice in Los Angeles this last time he was placed on the legal staff of the *Los Angeles Times* with a retainer in an amount sufficient to relieve him of all financial worries. Fitzgerald then was not in the best health, and was not able to address himself to the hard work of the law to the extent he had in the past. This did not preclude him acting in important cases, however. He took part in the libel action instituted by Mrs. Tingley against the *Times* in San Diego.

Katherine Tingley, plaintiff, v. Times Mirror Co., defendant (1907) 151 Cal. 1, was one of the sensational cases of that period. The defendant published the *Los Angeles Daily Times*. Mrs. Tingley sued it to recover damages for libel because of an article published in the *Times*. This article stated that Mrs.

Tingley was a former "common, dollar-taking spirit medium" who not being able to get along with theosophists with whom she had been associated formed the Universal Brotherhood Homestead at Point Loma near San Diego. The article charged that through a strong hypnotic power Mrs. Tingley was able to work on people, getting them to join the brotherhood and to live at the homestead. There she overworked and underfed them and caused them to indulge in gross immoralities. The article created a sensation throughout California. In spite of the able representation of the defendant by Fitzgerald and his associates, the action resulted in a judgment in favor of Mrs. Tingley in the sum of \$7,500.

A short time before his death Fitzgerald went to Butte, Montana, to live with his daughter, Helen, who was the wife of Louis Sanders, son of Wilbur Fiske Sanders, formerly a United States Senator from Montana. He died there May 12, 1903.

Fitzgerald left his daughter surviving him. He had been married twice. His first wife died while he was still living in Mississippi. Her sister nursed him at the time he was wounded by the would-be assassins who attacked him while he was district attorney. Later he married her. She was a daughter of Dr. C. S. Knapp of Jackson, Mississippi, and a niece of Daniel S. Dickinson, who served New York as a United States Senator and was prominently mentioned for the presidency in 1852. Dickinson's life is reviewed in a two-volume work, *Life and Works*, published in 1867.

From the fact that Fitzgerald attended St. Mary's College, one would conclude that he was a Catholic. James A. Anderson related that Fitzgerald was partial to the Catholic religion but that he affiliated with the Episcopalians, but no doubt he was a Catholic. However, being as close as he was to the Andersons, devout Episcopalians, he joined with them in their church activities a great deal. Apparently he did not go in for fraternal connections.

Fitzgerald was a large and heavy man, weighing in his later years upwards of two hundred and twenty pounds. He had a long torso, short legs, a big chest, and powerful shoulders. His hair was fair, and his eyes "steel blue," according to James A. Anderson, Jr.

Possibly his absolute fearlessness in the presence of danger was one of his most prominent personal qualities. That he had the gift of making and keep-

WILLIAM F. FITZGERALD

Forty-Third Justice

ing friends in the circles of high influence is patent. While by disposition naturally gentle and considerate, he also could wax sarcastic and exhibit a withering contempt. One time he defended an officer of the California National Guard who was being disciplined for not appearing in uniform at some function. Fitzgerald did not like the presiding officer, and in the course of his defense (looking at the officer, and shaking his finger in his face), uttered an apostrophe to the true soldier, distinguishing him from "tin soldiers" who live in a state of "imaginary warfare." The officer took deep offense, and later participated in

preventing Fitzgerald's nomination for the superior court upon the expiration of his term.

In 1937 many of Fitzgerald's friends were still living. They remembered his loyalty, his straightforwardness, dependability, frequent anecdotes, and hearty, contagious laugh.

FOOTNOTES

1. Shuck, p. 688.
2. Robinson, *Lawyers of Los Angeles*, pp. 82-84.

THE CALIFORNIA JUSTICES



William Cary Van Fleet

William Cary Van Fleet came to California as the pioneer era was closing. He is one of the three men born in Ohio who have come to the Court, the other two being Charles H. Bryan and his cousin, William H. Beatty. All of them had careers in Nevada as well as in California. Van Fleet was not a college-bred man. He mixed a certain amount of politics with his legal activities, and also found time to render substantial service to his church.

Van Fleet was born in Maumee City, Ohio, March 24, 1852. Maumee City was not far from Monclova, his childhood home. In fact, the two communities are regarded as about the same place for many purposes. His parents were Cornelius and Julia Anna (Runyon) Van Fleet. Van Fleet's father, who had come from Pennsylvania to Ohio, was of Dutch, and possibly also of Pennsylvania Dutch stock. His mother was of English ancestry. Her father, William Runyon, had also lived in Pennsylvania before coming to Ohio. It is said that he had engaged to buy one of the best farms in the state, when one of the financial somersaults that characterized Andrew Jackson's administration made it impossible for him to go ahead,

whereupon he went to the Toledo area and took up a new farm near Monclova. Another of William Runyon's daughters, Margaret, married Henry Oscar Beatty, William H. Beatty's father.

Van Fleet's youth was spent on the family farm in Monclova. He attended the common school of this place. "There was no other."¹

It was in a great degree due to Van Fleet's Aunt Margaret that Van Fleet came to California when he did. Sometime about 1868 she, with her daughter Emma (Mrs. George E. Bates), went to Monclova to visit relatives. Van Fleet, then about sixteen, was suffering considerably from malaria. His aunt felt sure that it would help him if he could come west with them. He could live with her and study law in her husband's office. Van Fleet's parents were finally persuaded.

It was not long after this that the Beattys were moving back to California from Nevada, where they had gone in 1863, and where Henry O. Beatty in 1864, upon Nevada becoming a state, had been elected one of the first three justices of the Supreme Court of Nevada. As his term had been coming to a close he became a candidate to succeed himself, but was defeated. It is said his advocacy of the greenback as legal tender defeated him. William H. Beatty, who had also gone to Nevada in 1863, was at the time serving as district judge in Austin.

Soon after arriving in California Van Fleet commenced the study of the law in his uncle's office in Sacramento. After three years he was admitted to the bar in Sacramento, April 21, 1873. Soon thereafter he went to Elko, Nevada, and took up the practice. He practiced there about two years when he returned to Sacramento and continued his practice. Through the years in Sacramento he was associated with Judge George A. Blanchard, Presley Dunlap, and A. C. Freeman, the distinguished author of *Freeman on Judgments*. After practicing in Sacramento about three years he became district attorney for Sacramento County, serving in this position during 1878 and 1879.

Van Fleet married Isabelle Carey, a daughter of Ransome S. and Mary Ann (Gotcher) Carey of Sacramento in 1879. She passed away the following year, leaving a small babe, Ransome Carey. The latter was taken by his grandmother Carey to be cared for. When Van Fleet married again in 1887 the

WILLIAM CARY VAN FLEET

Forty-Fourth Justice, April, 1894 - January, 1899

grandmother had become so attached to this boy that she felt she could not give him up. She, therefore, raised him, and was the only mother he ever knew. The Careys were originally from the South, Mr. Carey having been born in Tennessee and Mrs. Carey in Mobile. Van Fleet's second marriage was to Elizabeth Crocker, daughter of Clark W. Crocker, a brother of Charles of railroad fame, and Edwin B. Crocker, a former justice of the Supreme Court.

Van Fleet was elected to the Assembly of the Legislature as a Republican in 1881, serving through the twenty-fourth session. In 1883 he was appointed a state prison director, serving as such until he was elected a judge of the superior court for Sacramento County in 1884, taking his place on the court early in 1885. He was re-elected in 1890. He served on the court until 1892, when he resigned and came to San Francisco, where he became associated in the practice with Edwin B. and Joseph W. Mastick, and William C. Belcher, the association becoming known as Mastick, Belcher, Van Fleet & Mastick. Van Fleet's stay at the bar was of short duration, as in April, 1894, he was appointed a justice of the Supreme Court of California to take the place of Paterson, who had resigned. When he came to the Court William H. Beatty was the Chief Justice, and the other justices were McFarland, Garoutte, Harrison, De Haven, and Fitzgerald. In the election of 1894 he was elected to finish out Paterson's term expiring in January, 1899. There were only two changes in the Court's personnel the five years Van Fleet served. In the election of 1894 Henshaw replaced De Haven and Temple succeeded Fitzgerald.

Van Fleet and McFarland were the Republican and Labor Union Parties' candidates to succeed themselves for full twelve-year terms in the election of 1898. Van Dyke and William M. Conley of Madera, were the candidates of the Democrats, Silver Republicans, and People's Party. McFarland and Van Fleet were assailed by a number of newspapers as Southern Pacific men.² One of the things which was turned against Van Fleet with damaging effect was the opinion he had written in *Fox v. Oakland Street Railway Company* 118 Cal. 55, 50 P. 25, handed down in 1897, wherein it was held that damages in the amount of \$6,000 for negligently running over and killing a little boy four and a half years old was excessive. While the opinion undoubtedly expressed correctly the law as it then stood, and was concurred in with-

out qualification by Beatty and Harrison, the other two justices of the department of which Van Fleet was part, it expressed somewhat coldly law touching closely on people's tenderest sensibilities. "... the plaintiff's cause of action," ran the opinion in part, rested "solely upon his right to recover for the loss of the services of his child resulting from its death ... the jury was properly instructed that it could award nothing ... for sorrow or grief of the parents, but must confine their verdict to an amount which would justly compensate plaintiff for 'the probable value of the services of the deceased until he had attained his majority, taking into consideration the cost of the support and maintenance during the early and helpless part of his life'; that while they could consider the fact that plaintiff had been deprived of the comfort, society, and protection of his son, this consideration could only go to affect the pecuniary value of his services to plaintiff."

* * *

"... And while in no sense conclusive, we have the right, and it is most reasonable in judging of the probable character of occupation the deceased would have pursued, to regard, with other circumstances surrounding him, the calling of his father—since experience teaches that children very frequently pursue the same general class of business as that of their parents."

The evidence showed the father to be a common tradesman. It is not clear that the last clause was necessary, considering the construction it lent itself to by those disposed to make something out of it, and the emphasis it placed upon the yardstick used for evaluating a life. In fairness to Van Fleet this should have been a per curiam opinion.

Van Dyke's backers exploited the opinion to his advantage. Van Dyke himself stated that "As long as God gives me breath, the millionaire and the man in rags shall alike receive justice from me either in private or public life."³ Van Fleet in the opinion had expressly stated "... there is not in this country one rule of law for the rich and a different rule for the poor."

Van Dyke led in votes as relates to the candidates for the Supreme Court, receiving 117,287 votes. Van Fleet with 108,212 votes was the low man of the major parties.

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Van Fleet's work on the Court was of the highest quality. Considering the short period he served on the Court the representation of his opinions that have found their way into the casebooks runs high.

Upon leaving the Court Van Fleet again took up the practice in San Francisco in association with his old law partners, except Belcher, who had died, the association being known as Mastick, Van Fleet & Mastick.

Soon after leaving the Court Van Fleet was appointed a code commissioner and served in this capacity until 1902. He also addressed himself to politics and from 1900 to 1904 was a Republican national committeeman. In 1903 he was appointed a trustee of Hastings College of the Law, succeeding Warner W. Cope, and served in this position until his death in 1923. For a number of years he was a vestryman in St. Luke's Episcopal Church in San Francisco.

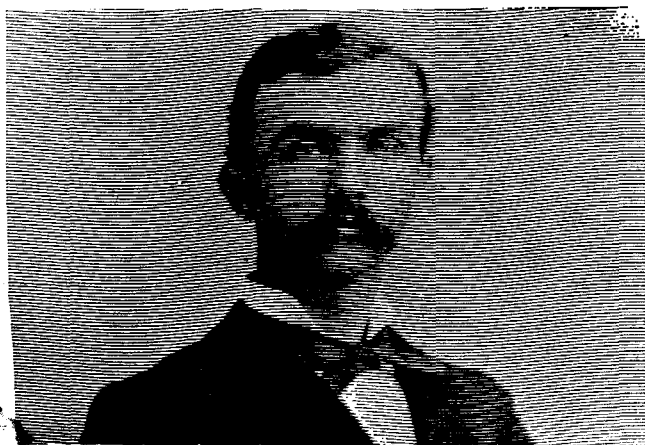
Van Fleet was appointed by Theodore Roosevelt a judge of the United States District Court for the northern district of California April 2, 1907, and served in this position until his death, a little over sixteen years. His work here was a continuation of the kind of work he had done on the Supreme Court of California. Upon his death he was succeeded by Frank H. Kerrigan, who was appointed in 1924. It was upon this Court that Van Fleet impressed everyone with his wonderful memory. It is said that he was able to quote without note from hundreds of decisions.⁴ While he was never promoted to the circuit court of appeals, he nevertheless sat a great deal with



*Supreme Court of California taken between 1895 and 1899
Left to right: Henshaw, Van Fleet, McFarland, Garoutte,
Beatty, Temple, Harrison*

that Court. In his later years he tried a number of cases in other parts of the United States, and in so doing acquitted himself with distinction. "In 1921," observed the *San Francisco Examiner* at the time of his death, "Judge Van Fleet was praised for his decision while sitting in New York as a trial judge in a case involving alleged violation of the Sherman-Anti-Trust Law by four persons. Jail sentences for the quartet was hailed as 'putting teeth' into the Anti-Trust Act. It was noted that in eleven years the Act had been law Judge Van Fleet was the first judge who had meted out a jail sentence."⁵

Van Fleet was given a full opportunity to demonstrate his courage and mettle while serving in the district court in connection with the Hindu War conspiracy case tried before him in San Francisco during the world war. Immediately after the Court had recessed for noon one day, and after Van Fleet had left the bench, one of the Hindus shot and killed another Hindu in the courtroom. All was intense excitement, of course. Someone ran to Van Fleet, then in his chambers, and urged him to hide in the lavatory, as they were after him and the district attorney, John W. Preston, also. Without a moment's hesitation he walked into the courtroom, and taking the nearest available object, which was a water glass, pounded the desk for order, ordered the doors locked, and directed the marshall to take into custody all who had been involved in the disturbance. Van Fleet's wife, who had been waiting in his chambers to join him at luncheon, quietly followed him into the courtroom and shared the danger with him.



Van Fleet when younger

WILLIAM CARY VAN FLEET

Forty-Fourth Justice

Van Fleet died in San Francisco September 3, 1923, following a cerebral hemorrhage. This was on Monday. He had been on the bench the Friday before. His death, therefore, came as a great surprise and shock to everyone. He had first become afflicted while chatting with his wife in their home.

The courts paused to officially note his passing. His character and work were highly praised. United States District Judge John S. Partridge, at one time a law clerk in the old Mastick, Belcher, Van Fleet law firm, in adjourning his court said that the adjournment was made "in loving memory of a great man, who feared nothing and no one; a man who was as near the perfect judge as a man can be in this life." He spoke of him as a man "devoted to his family," and "his ideals," and who was "unselfish, just and always kind."⁶ This simple statement summarizes succinctly and truthfully his qualities, and the estimation in which he was held by his judicial associates, and those who knew him the most intimately.

Van Fleet left surviving him his wife and five children, Ransome Carey, mentioned above, and Alan Crocker, Clark Crocker, William Crocker, and Julia Crocker. The funeral took place from his home and was under the direction of Reverend Webster W. Jennings of St. Luke's Episcopal Church. His remains were interred at Cypress Lawn Cemetery. His wife survived him many years, passing away December 17, 1937.

Van Fleet left an estate of something over \$82,000 which he devised and bequeathed to his wife and children.

Two of Van Fleet's sons, Ransome Carey and Alan Crocker followed in his footsteps and became successful lawyers in San Francisco.

Van Fleet was a medium-sized man, about five feet eight or nine inches tall, and weighing about one hundred and sixty pounds. He was dark complexioned, with dark eyes and dark hair. While somewhat austere on the bench, off the bench he gave expression to a great deal of good fellowship. He took an interest in young lawyers, and went out of his way to make suggestions to them that would help them, and became very popular with them.

Van Fleet rose from modest beginnings and came to the front on merit. The fiber of the Supreme Court of California is the tougher for his brief service there. It was not in him to truckle. He had backbone.

FOOTNOTES

1. Interview in San Francisco with Emmy Beatty Bates, William H. Beatty's sister, in 1938.
2. *S. F. Examiner* (Oct. 25, 1898).
3. Shuck, *History of the Bench and Bar of California* (1901), p. 499.
4. *S. F. Examiner* (Sept. 4, 1923), 9.
5. *Ibid.*
6. *S. F. Examiner* (Sept. 5, 1923).

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Frederick W. Henshaw

Frederick William Henshaw was one of the most brilliant legal minds that has appeared in California. As a writer of sound law he rates with the two or three best, Field, Shaw, McFarland, etc. In contemplating his accomplishments one is tempted to believe great judges are born as much as they are made. While he had to submit to his share of drudgery in producing clear, well reasoned opinions, this in no way dims the fact that he was gifted.

Henshaw was a judicial officer the greater part of his mature life, and after Shenk (thirty-four years), and Beatty (twenty-five years), has the longest record of service on the Supreme Court of California. He is one of the five men born in Illinois to come to the Court, the other four being Morrison, Melvin, Sloane, and Edmonds.

Henshaw was born in Ottawa, May 24, 1858, and was the son of Edward and Sarah (Tyler) Henshaw. He was of English stock. He received his elementary education in the community of his birth. His father served in the Union Army in the Civil War. After the

war he remained in the army. He was later killed in San Antonio, Texas.

Sometime before 1873 Henshaw's oldest brother, Edward (Ned), came to California. That year his mother came also, bringing the rest of her family, Henshaw, William Griffith,¹ and Tyler, settling in Oakland which became the family home through the years.

As Henshaw was about fifteen when he came to Oakland, it may be that he attended high school at least a short period here. About 1875 he entered the University of California and graduated in 1879. While there was no law school at the university in Berkeley at this time, some courses in law and jurisprudence were nevertheless given in the academic departments, and from all that appears he received no other formal instruction in law. He was admitted to the bar soon after graduating, whereupon he took up the practice in Oakland.

Nothing unusual has come down from his short period at the bar. The writer was told by Thomas W. Harris, for many years the presiding judge of the superior court in Alameda County, and well known to every lawyer of the county in his day, that he had known Henshaw from an early date but recalled nothing of particular interest as relates to his early years in the law. In 1884 he was elected a justice of the peace (police court) for Oakland townsite, and re-elected in 1886 and 1888. He served in this capacity until 1891, when by the election in 1890 he became a judge of the superior court in Alameda County.

Henshaw had served on the superior court a relatively short time when in 1894 he was elected to a twelve-year term on the Supreme Court of California. Temple was also elected for twelve years at this time, and Van Fleet to finish out Paterson's term expiring in 1899.

When Henshaw came to the Court in January, 1895, Beatty was the Chief Justice, and McFarland, Garoutte, Harrison, Van Fleet, Temple, and himself the associate justices. It is doubtful if more ability has ever been seen on the Court at any time than at this time. Henshaw lived to see them all pass from the Court and was the last survivor of this group. As they left the Court they were on the whole succeeded by men of equal ability as appears when it is mentioned that Van Fleet was succeeded by Van

FREDERICK W. HENSHAW

Forty-Fifth Justice, January 1, 1895 - January, 1918

Dyke (1899), Temple by Lorigan (1902), Garoutte and Harrison by Angellotti and Shaw (1902), Van Dyke by Sloss (1906), and Beatty by Matt I. Sullivan (1914).

Henshaw commenced producing a class of opinions that commanded the highest respect immediately upon going upon the Court and continued to do so to the last. Only one justice has produced more opinions that have been selected by casebook writers, namely, Shaw. Some two dozen casebook compilers from many leading law schools in America have incorporated one and sometimes a number of Henshaw's opinions. These casebooks represent almost that many different branches of the law.

Henshaw was re-elected for another twelve-year term in 1906.

Henshaw served during the period that the Supreme Court came under heavy criticism in connection with the San Francisco graft cases—Schmitz, Ruef, etc. Of all the justices he was singled out as the arch villain. Inasmuch as this is reviewed in the sketch on Chief Justice Beatty it is not repeated here. From all that appears Henshaw permitted things to run their course without public comment, in contrast to Beatty's practice. While Henshaw was expressly mentioned in impeachment and recall talk by men of the highest responsibility, and was in loose talk with Lorigan and Melvin spoken of as a Southern Pacific judge, there was nothing in any of the criticism leveled against him at this time that could in the slightest bring his integrity into question. In due course things completely calmed down as relates to him personally as well as the Court.

Early in December, 1917, as he was completing twenty-three years on the Court, Henshaw submitted to the Governor his resignation to take effect January 1, 1918. This was one year before the expiration of his term. In giving his reason he said: "I have for some time considered resigning. My relatives and friends have repeatedly urged me to and have assured me that my income in the private practice of the law would be many times greater than my salary as a justice of the Supreme Court." He also stated that he had voluntarily engaged in confidential work for the government, and that he was expecting to devote himself wholly to the service of his country, and that he was at that time expecting a call any moment to go to Washington, D. C.² There is an element of

mystery about this statement and leaves one in the dark as to just what he had in mind as relates to new work.

Upon leaving the Court Henshaw became associated in the practice with Percy B. Black, a successful and distinguished lawyer, and John J. Goldberg, in San Francisco, the association becoming known as Henshaw, Black & Goldberg. Goldberg, at the time, newly out of the law school, has since made an honored name for himself as a lawyer. Goldberg dropped out in a year or two. About 1924 Eric W. Lyders joined them, which continued two or three years, when Black moved to Los Angeles. From that time on Henshaw was not affiliated with anyone. One notes that he appeared in the Treasury Department in Washington in connection with some income tax work in 1924, at which time he suffered a slight stroke while watching a baseball game.

Ordinarily this sketch would be drawing to a close at this point, leaving as the outstanding thing about Henshaw his great judicial record. However, after leaving the Court there broke about his person and life a story and situation which could only have proved embarrassing and discouraging to him in the extreme. That it hurt him to no end in his own sensibilities, as well as in the minds of many people, there can be no question.

Fremont Older, editor of the *Bulletin*, and later the *Call*, was the immediate occasion of the mortification Henshaw now experienced. No man ever espoused the cause of a condemned man more than Older did Thomas J. Mooney's. In this regard he made unrelenting war on Charles M. Fickert, district attorney in San Francisco, who had played a prominent part in Mooney's conviction. It was Older's confirmed conviction that this was a complete miscarriage of justice and that Henshaw was the brains behind it. It therefore became necessary to destroy Henshaw. To accomplish this he had in his hands a long statement signed by a man by the name of William J. Dingee reciting the details of Henshaw taking a bribe in the amount of some \$410,000 in the James G. Fair will contest³ some eighteen years before Henshaw left the Court.

Henshaw hearing that Older had the statement and was planning to publish it, sought an interview with him, which was arranged, and took place.

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This was not the first time the Dingee statement had arisen to plague Henshaw. Some "five or six years" before there had come reports that Dingee was spreading this story in New York. When he returned to California Henshaw's friends asked him if the statements attributed to him were true. One of these friends was Frank C. Drew, a prominent lawyer in San Francisco. According to Drew, Dingee denied that he had ever made any statement derogatory to Henshaw, and stated that "everything he knew about the Judge was to his credit, both as a man and as a judge." Henshaw himself stated that he had been approached by "a man calling himself a friend of Dingee" some years before, who had told him that Dingee was in desperate need of money and had prepared "an awful" statement concerning him and a number of California friends, which he proposed to give to the press unless he was paid something for its suppression. Henshaw declared that he told the man, whose name he did not give, that it was blackmail, and refused to talk further with him.⁴

The interview between Older and Henshaw took place at the Fairmont Hotel in San Francisco and was in two parts, the first, one evening, ended by an interruption, and the last the following morning. About the only thing that Henshaw and Older agree on is that the conversations did take place. As to what was said or what was agreed to they differed diametrically. According to Older, Henshaw confessed his guilt and threw himself upon his mercy, pleading to be permitted to go to his grave without the disgrace that would result from the publication of the charges, offering to resign from the Supreme Court, to go to Governor Stephens and personally urge him to grant Mooney another trial, and to refrain from any more anti-Mooney activities, and that in consideration of these promises he gave him his word that he would not publish the charges. Henshaw on the other hand stated that he explained to Older what malicious falsehoods Dingee's assertions were and that Older agreed with him that no good could come by giving them publicity; that the Mooney case was not even mentioned, and that these conversations had nothing to do with his resigning from the Supreme Court, a decision he had made before they took place.

The Mooney case becoming the great labor issue which it did, taking on not only national, but international proportions, the United States Secretary of

Labor directed John B. Densmore, Director General of Employment, to make an investigation of the circumstances surrounding Mooney's conviction. He spent several months on this assignment, and in the course thereof secretly had some dictagraphs installed to catch the conversations that might take place in or from the district attorney's office. By the latter part of November, 1918, his investigation had been completed. He thereupon made his report public and the full text thereof was published in the *San Francisco Call* on November 22d and 23d. The report, which was rather lengthy, consisted in part of statements made in or emanating from Charles M. Fickert's office as recorded by the dictagraph, and involved a couple of short telephone conversations taking place on the morning of September 18th between Fickert and Henshaw.⁵ Densmore made the most of this fact.

By far the most sensational part of the Densmore reports was his discussion of Henshaw. Coming as a report by a government official, its effect was dramatic. No publication which Older as the editor of a great daily could have made could have struck such consternation among the public as his publishing of this report. To make certain as many should see it as possible he ran the report two days straight.

The report outlined rather fully the Dingee bribery accusations and what was alleged to have been said in the conversations between Henshaw and Older. Densmore of course could have gotten this only from Older, and he gave the latter's version of them. Henshaw had not been consulted. One reading the report will note that the excuse for publishing all the scandal about Henshaw was to make it clear that Henshaw was of a character that would make him entirely capable of joining in a conspiracy to "frame" Mooney.

Henshaw denied the charges made by Dingee as "absolutely, viciously false," and declared that he had never received a corrupt dollar in his life. He lamented the fact that he had ever befriended Dingee. "The worst calamity that ever befell me, was in being a loyal friend to Dingee. . . . Why a public investigator of the United States Government should use such a defamatory blackmail statement, for the sole purpose of besmirching me, I am unable to comprehend, and why, moreover, they should have done this without giving me the slightest opportunity to speak in my own behalf, passes my comprehension." After

his first emphatic denials of the charges he told the newspaper reporters who interviewed him at his apartments that his friends had urged him to not "go off half-cocked, but to wait until action may be carefully considered. . . .," mentioning the names of two of San Francisco's prominent attorneys⁶ as having hastened to urge this advice upon him. "You know the saying that the lawyer who takes his own case has a fool for a client, and there are many things in these remarkable accusations that must be considered."⁷ Later he reiterated that he was "unwilling to try in the newspapers the monstrous charge which" had been brought against him, adding that "the falsity" thereof would "be established before the only proper tribunal—the court of equity" which would try the case instituted by the Fair nephews and nieces wherein Henshaw was named as a defendant, to have the assets of the Fair estate impressed with a trust in their favor.⁸ "My only desire is and has been," he continued, in this later statement, "to confront my accuser before such court that its judge may know us both and weigh the evidence which will be adduced. . . . I add only that with confidence I await my complete vindication, which is certain to come. Otherwise the word of one who by his own confession declares himself to be a corruptionist, turning informer against the man he called his friend—will outweigh all else—over God's truth."⁹ Henshaw stated that he had interested himself somewhat against the I.W.W.'s and had given Fickert some little advice with regard to the Mooney matter, but not a great deal.

While Henshaw was indignant over the charges, he kept his composure, at least from outward appearances. He never made a statement without expressing absolute confidence that he would be fully vindicated. In the press interview referred to above, the reporter for the *Chronicle* mentioned how Henshaw had "discussed the Dingee-Densmore accusations against him with a freedom and a clarity which abundantly proved that the mental turmoil of the last twenty-four hours had not disturbed the intellect that produced the most remarkable literature among the Supreme Court decisions," and how he "gave the impression of being as free from anxiety as the Japanese spaniel that played on the rug at his feet, or the yellow parrot nonchalantly breaking an occasional cracker at his perch in the window."¹⁰

Following the publication of the Densmore report Older continued to keep the matter very much alive

by giving full publicity to the developments that followed and giving prominent editorial notice to the issues involved as he viewed them. To corroborate what Densmore had set out and to refute Henshaw's denials he made a statement of his own, giving his version of his interview with Henshaw. It parallels the Densmore statement. In his editorials he made it clear that he considered the district attorney's office all that Densmore had characterized it, as a place where the guilty received immunity and the innocent were persecuted, a place where "anarchy" reigned. In their discussions of Henshaw and the district attorney's office these editorials are written in exactly the same spirit as the Densmore report, and much of the language used is enough like that of the report to have been written by the same pen.¹¹ That the report is not the source from which the editor derived all of his information is clear from the fact that he mentions alleged facts that are not to be found in the report.

But Older was not satisfied with the publicity alone that the report, his statement, and his editorials received. He also addressed a letter to the San Francisco Bar Association, calling attention to the recent publicity relating to Henshaw, and observed that it was something they could not ignore, advising that he stood ready to support the charges that had been made against Henshaw. Jeremiah F. Sullivan, president of the association, called a meeting of the board of governors and the committee on discipline and grievances and read to them Older's letter. The majority agreed that the matter was too serious to be disregarded, whereupon the committee was directed to make an investigation. A time was fixed for a hearing and letters directed to Henshaw and Older, asking them to be present. Henshaw, by his attorneys Samuel M. Shortridge and Stanley Moore advised the committee that he desired "the fullest investigation and offered to cooperate in every way."¹² At the time fixed for the meeting Samuel M. Shortridge appeared for Henshaw, asking a little more time, as Henshaw had spoken to him only a day or two before. Older did not appear but had sent a letter, wherein he advised that if the association would examine into the circumstances surrounding the conviction of Mooney he would testify on the Henshaw charges. The committee being satisfied that Older knew they would not go into the Mooney matter in connection with the Henshaw affair, felt that he was somewhat repenting having sent his first letter, and was taking

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this way of dropping out. Nothing more came of this investigation.

Anyone reading the Densmore report will be struck with its intemperateness. It was, as the *Bulletin* termed it, a brief for Mooney. It was not only an extremely prejudiced statement, but indulged in offensive personalities. A single example: "Fickert is rather too slow, too obtuse, too entirely lacking in resource to be aught than the merest automaton; on the other hand he is unscrupulous, immoral, devoid of all knightly and chivalrous instincts and more lawless than the most abandoned I.W.W., all of which characteristics would conceivably count in his favor with a man of the caliber of Henshaw." One sentence ran: "He (Henshaw) was a member of the Court when the writ of rehearing in the Abe Ruef case was signed, an act which led to a discussion of impeachment proceedings in the legislature and ultimately to the passage of the law providing for the recall of judges." From what is set out in the Beatty sketch it will appear how misleading this statement was. He might have said exactly the same thing with regard to all the justices voting to give Ruef a hearing in the Supreme Court. Nothing is clearer than that these justices, and Henshaw individually, were in the clear as relates to integrity.

Summarizing, the report in part, ran:

Fickert's desperate daily attempts to bolster up a cause which cannot for a moment stand an unprejudiced examination; his affinity for a man who is a discredited judge and an unblushing representative of dishonest interests; his constant association with and dependence upon, a corrupt corporation detective; his passionate personal hatred for the various defendants; . . . these and similar questionable activities apparently represent the chief business and ordinary daily routine of the present district attorney of the City and County of San Francisco. In the strictest and most liberal meaning of the word, anarchy reigns in the office which is supposed to be dedicated to law and order.

Upon making his report, Densmore promptly left San Francisco. His assistants went into hiding and were not to be found. From Portland he wired the foreman of the grand jury of San Francisco that he did not know when he would be back, but hoped that that would not prevent them from going ahead with their investigation. The Governor took cognizance of the report, and the Attorney General's office was directed to institute a probe, whereupon a special assistant attorney general was assigned to this task.

From Portland Densmore gave out additional statements calculated to reflect upon San Francisco,

such as the following: "... A man has no chance if they start to get him in San Francisco. They can jostle a man off the street, kill him and have a dozen witnesses testify he pulled a gun and started the fight. It is worse than New York. I have been in nearly every city of importance in the United States and San Francisco is worse than any of them."¹³ How ridiculous! When a discussion by an officer of the government becomes as irresponsible as this it is clear pure prejudice is playing a prominent part. The requests by the state and the City and County of San Francisco for Densmore's return were all denied.

The Secretary of Labor gave as his excuse for declining to have Densmore return that agents of his department had been held indefinitely in San Francisco under subpoena when they had refused to testify before the grand jury, interfering with their comings and goings. Attorney General U. S. Webb's reply to that was, that that would not have needed to be the case if the witnesses would have testified and not refused to do so. Secretary Wilson also declined on the ground that the grand jury was under the control of Fickert. The answer to this was that the investigation was under the direction of the superior court of San Francisco and the Attorney General's office, and that any findings or recommendations calling for action with regard to the district attorney's office would be made to the mayor and board of supervisors of the city, and the district attorney would have nothing to do in the handling of any proceedings that might become necessary. Neither Densmore nor his aids became available as witnesses.

When Older was cited to appear before the grand jury, he informed them that he was afraid to go into the city hall without a guard, whereupon he was escorted under police guard, but refused to testify on the ground that he was a newspaperman and could not properly reveal the information he had.¹⁴

The press, the city government, and the state government all complained bitterly at the indisposition of the Secretary of Labor to cooperate. "Why is Densmore Absent from City?" was the title of a series of editorials in the *Bulletin*, commencing with November 25, 1918, and appearing for a number of days. The first one read in part as follows:

It is inconceivable that a government official bent upon doing his whole duty and doing it promptly should absent himself so precipitately after having rendered a report that

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has convulsed all circles of society. That he suddenly should betake himself several hundred miles away from the scene where his presence is most needed at this particular time is not only unfortunate, but it would tend to discredit the document he has prepared so elaborately and painstakingly were it not for the fact that it bears the unmistakable impress of truth.

The one of November 27th ran in part:

When J. B. Densmore left this city so hurriedly last Friday on the publication of those portions of his report, which involved city and county officials, it left a bad impression. All men like to see an accuser face those whom he has brought to book.

Towards the latter part of December Attorney General U. S. Webb writing to the Governor, said in part:

The correctness of the conversations (dictagraph) which are thus reproduced has been questioned and without those witnesses we cannot prove that these conversations were ever held, and the fact that the witnesses are kept from us might lend some doubt if such proof could be made if the witnesses were here.¹⁵

Fickert complained that words had been deliberately omitted from what had been said, entirely changing the meaning. Other witnesses also denied that they had ever said the things ascribed to them.

I am much disappointed, continued Webb, that the promised help has not been and will not be furnished.

* * *

You will readily see that by withholding of the testimony of these Federal agents our efforts have been obstructed, when and where we had expected and had been promised assistance.

If the service which was contemplated by Secretary Wilson that Mr. Densmore should render was not more in the interests of the public than that which Mr. Arnold (Stanley Arnold, appointed the Secretary's attorney in San Francisco after the publication of the Densmore report) had been permitted to render, the wisdom of Mr. Denman (William Denman who was first asked to represent the Secretary of Labor and declined) declining the proffered appointment plainly appears.

Mr. Arnold, Mr. Webb went on to say, has rendered us no assistance and knowing his ability and fairness, I feel quite free to believe that he has been compelled to act as directed, rather than permitted to act as his good judgment would dictate.

The grand jury probe, therefore, also completely faded out.

The remaining method left of testing the truth of Henshaw's protestations of innocence was the trying of the suit which had been instituted by the Fair nephews and nieces, in connection with which Dingee's deposition had been taken, and published word for word to the world at the time.¹⁶ Henshaw had objected to the taking of the deposition on the

grounds that it would be a means of permitting Dingee being absent when the trial would take place, but it was taken notwithstanding Henshaw's protestations. On December 26, 1919, however, judgment of dismissal of the suit was entered upon stipulation of all the parties involved, Henshaw or his attorneys apparently taking no part in this, the matter having been settled out of court.

So far as establishing any of the charges that had been made against Henshaw that was not done by any agency. The same was true with regard to Charles M. Fickert and his office. Mooney continued to languish in prison, despite the continuous and untiring efforts of some of the best legal talent in the entire country and no little political pressure from time to time upon the pardoning power of the state until he was pardoned by Governor Olson, January 7, 1939.

In 1917 an election was held in San Francisco for the purpose of passing upon whether or not Fickert should be recalled. Among those who urged the people to stand by the district attorney as one who had only fearlessly done his duty, was Theodore Roosevelt. Roosevelt said anyone assailing Fickert for "prosecuting anarchists" should be "deprived of citizenship."¹⁷ The recall was defeated. As a political figure, however, Fickert's power was definitely broken. There was too much hostility against him in too many quarters for him ever to receive much political consideration any more.

It came to be the consensus of opinion that the Densmore report hurt Mooney's ultimate chances more than it helped him.

That Henshaw's good name had been permanently clouded in the popular mind there can be no doubt.

Of course, there will be those who will always be curious as to whether or not Henshaw was or was not innocent. It would be impossible to say, as to this, from the record in its present state. If there are those who choose to believe he was innocent, there is much to support their belief. On the other hand, if there be those who like to think he was guilty, there is evidence to sustain that feeling. For the person who finds himself without any opinion on the matter, and that probably is the great majority of mankind, and not disposed to form one without sufficient evidence to remove all reasonable doubt, there are many questions, wholly unanswered now, which he would like to have answered.

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For those who would believe Henshaw innocent, there are his own statements and reactions to the accusations. To one disposed to believe him they carry considerable conviction. They sound like honest statements. They are not evasive. They are plausible. There was no wilting in his stand of innocence anywhere along the line. There was never any question in his mind that the charges could ever be established and that he would not be fully vindicated. To them Dingee's statements to Frank C. Drew, denying "ever having made" any statements derogatory to Henshaw's character "and declaring that everything he knew about the Judge, was to his credit, both as a man and as a judge" would have a bearing. They would closely scrutinize the record and character of Henshaw's chief accuser, Dingee, and would be concerned with the motives prompting the making of the charges. Dingee's reputation was not the best.

It should also be borne in mind that the legal questions which controlled in the Fair case were exceedingly close and nice. Judge Charles A. Slack, whose integrity or ability have never been suspected, was the trial judge before whom the questions were originally presented. He ruled that the trust provisions of the will were invalid, giving the estate to the Fair children, to the exclusion of the nephews and nieces. That is, he gave in the beginning the decision the Supreme Court did in the end. The Supreme Court reversed this by a four to three decision. Henshaw being one of the four. While some of the strong men of the profession remonstrated loudly on purely legal grounds when the Supreme Court reversed itself, there were others of equally respectable standing who were clear and insistent that the trust clauses directing conveyances to be made, were invalid.

On the other side there is Dingee's unqualified statement that he personally handed Henshaw the first ten thousand in large bills, and that he received the four hundred thousand, and personally delivered a substantial portion of that to him, and was positive that he got all of the rest also. There is the word of his bookkeeper Frank A. Losh that the Dingee books showed the J. Brown account, which was supposed to represent Henshaw. While true, as Henshaw said, he could not be held responsible for Dingee's books, it would be against him that he was in Dingee's office every day, and sometimes twice a day, and very friendly with Dingee, during this period, as set out

by Losh in his affidavit published in the *Call* along with the rest of the matter relating to the Henshaw charges. There is Older's word that Henshaw confessed it to him, and threw himself upon his mercy. It is hard to get around this, for even though Older possessed a fierce vindictiveness towards Henshaw, he was always held in the highest regard as an honest man.

In contemplating the whole matter many questions present themselves.

Was Henshaw correct in his statement that his resignation was already with the Governor when he had his interview with Older?

What did Dingee get out of the bribery at the time the Fair children were paying the money to him to be delivered to Henshaw? He said he got none of the ten thousand, or the four hundred thousand. What did he get? Is there another story relating to this phase of the matter?

What induced Dingee to withhold his "confession" for a period of twenty years? What, if anything, did he receive from the Fair nieces and nephews for cooperating with them by making the confession?

Why did Dingee not come forward with his story in 1911, when the state was so highly stirred up over the Ruef matter, and when the "confession" would have accomplished all that Henshaw's enemies could possibly have worked out? Why did Dingee use the statement in a way common to blackmail if it was not blackmail?

What did Dingee mean when he stated at the time his deposition was taken that he was sorry he had had to make it, but he had been forced into doing it?

Why did not Older tell the grand jury and the San Francisco Bar Association what he had so fully detailed to Densmore, and what he had said in his signed statement?

Henshaw left an estate of some \$338,000. However, in a financial way he had married well. His first wife's father had been one of the well-to-do men of his day, with assets over the million dollar mark. Shortly after his death in 1879, the greater part of his estate had gone into a family corporation of which Henshaw was one of the organizers and directors. Henshaw and his wife broke up in their marital relations thereafter, but her estate at the time of her death was appreci-

FREDERICK W. HENSHAW

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ably larger than the one Henshaw left.¹⁸ Henshaw's brother William Griffiths also married one of Hiram Tubbs' daughters. Henshaw brothers married to Tubbs sisters, left an estate reputed at over five million, and Henshaw was more or less associated with him in business matters. Henshaw's financial accomplishments shrink into insignificance compared with those of his brother, who addressed his full time to business. It is apparent that Henshaw could have accumulated the estate he left on legitimate lines.

Henshaw first married Grace Tubbs, a daughter of Hiram and Susan Tubbs. To them were born three sons, Stanley Tubbs, Frederick Tubbs, called Fritz, and Stuart Tubbs. Henshaw and this wife were divorced. Later he married Mrs. Helen Walker of San Francisco. There were no children by this marriage. Both of these ladies interested themselves to a great degree in the general welfare of the community. The first Mrs. Henshaw passed away in May, 1913. She was a resident of Piedmont at the time of her death.

Henshaw loved hunting, and was partial to duck shooting. Not only did he like to shoot fowl on the wing, but was greatly fascinated with birds generally. When he lived "in the country," Atherton, he maintained an aviary wherein he kept a considerable number of birds. Through the years he gathered together a very fine collection of stuffed birds. A well marked bird took his fancy as few other things. In this connection there is a story.

While passing through Live Oak on one occasion he chanced to see a specie of goose that he had never seen before and arranged to have a choice pair sent to the University of California for identification as to scientific name, planning to thereafter have them stuffed and added to his collection. At the University they were identified as "Anser Albifrons Gambeli," and upon the examination being completed, were forwarded to Henshaw at the Pacific Union Club in San Francisco. His wife supposing they had been sent by some friend to be eaten, and knowing Henshaw's fondness for goose, arranged a party. It may well be surmised that all was merry at the dinner table, with the geese prepared as Henshaw liked goose best. By and by Henshaw mentioned that he had never eaten better goose, and inquired where they had come from. "A man by the name of Westerfeld sent 'em," was the reply. Thereupon Henshaw "swooned." Mentioning the occasion to his wife over twenty years later, she broke into a hearty laugh, and remarked that

she had never seen anything more amusing. "I shall never forget the expression on his face, when it dawned on him what had happened. It was all terribly funny, and at the same time TERRIBLY TRAGIC." The incident immediately found its way into the press, and the *San Francisco Examiner* of November 6, 1917, closed its account of the affair by stating that "the Judge" had not at that time "recovered" from the "fowl blow."¹⁹

Henshaw's hunts included deer also, although this did not have the place in his affections that duck shooting did. On at least one occasion he mixed some fast travel of his own with the hunt. A despatch from Redding under date of June 24, 1922, was to the effect that a warrant had been issued there for his arrest for "exceeding the speed limit up the canyon." "The traffic officer tried to catch him, but failed . . ." "The officers got the number of the car, however," and from that the law was able to catch up with him later. Asking his wife at the time this sketch was being written if she remembered the details of this she replied that "he didn't tell me about that."²⁰

In stature Henshaw was of average size, being about five feet, seven or eight inches tall, and weighing about one hundred and sixty-five or seventy-five pounds. He was dark complexioned and had brown eyes and hair. There was a decidedly professional appearance about him, and he possessed a distinguished look. One might well have believed he was a man of parts from a mere glimpse of him.

He was a Republican all his life. He affiliated with no church, and was a Mason. While a close and careful student, he was social by nature, and liked to mingle socially with his fellows.

Henshaw passed away at his home in San Francisco, June 8, 1929, from a cerebral hemorrhage. He had been in poor health some years before he passed away. He was at the time just past seventy-one. He left surviving him his wife and three sons. His remains were cremated, and pursuant to his request the ashes were strewn from a plane²¹ upon the San Francisco Bay, "near which he passed the greater part of his life."²²

His estate he left to his wife and three sons.

By disposition he was kindly and friendly. He was never so rushed that he could not stop to give a kindly, friendly word. He had an abundance of wit

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and good humor. He had a host of friends, both in an intimate, personal way, and in a less personal way by reason of the name he made for himself professionally. In the legal circles of California his name will always stand out as one of the ablest justices which its Supreme Court has ever had.

FOOTNOTES

1. It will be noted two of the Henshaw boys had William in their name.

2. *S. F. Examiner* (Dec. 9, 1917), 4, col. 1.

3. *In re Fair's Estate* 132 Cal. 523; 60 P. 442 (Feb. 26, 1900). Reversed 132 Cal. 523, 64 P. 1000 (April 30, 1901).

4. *S. F. Examiner* (Nov. 23, 1918), 6, col. 7.

5. Following are the telephone conversations between Henshaw and Fickert as set out in the Densmore report:

The first—

Fickert: "Judge, this is Fickert. Did you want me?"

Henshaw: "Hello, Charlie. I only rang up to ask what progress you were making in the Anton Johanssen matter. Have you anything to show me?"

Fickert: "I have a few letters I am getting together."

Henshaw: "I'd like to get the compilation just as soon as you are finished."

Fickert: "I'll bring them over."

Henshaw: "Do so. I'm having Van (probably Captain Van Antwerp of the Naval Intelligence Service) start on the same thing. He was just as much shocked as we were. Drop over any time then, Charlie."

Fickert: "All right, I'll be over before noon."

The second—

Fickert: "Can I bring that letter over now? I am having a lot of copies made."

Henshaw: "Yes, Charlie. I will be here."

Fickert: "Did you see Mulhall yesterday?"

Henshaw: "Yes; he said he would come in with Shannon sometime."

Fickert: "All right; I'll bring that over right away." *S. F. Examiner* (Nov. 23, 1918).

6. Probably Samuel M. Shortridge and Stanley Moore, who represented him later when the San Francisco Bar Association took action.

7. *S. F. Chronicle* (Nov. 24, 1918), 8, cols. 2-3.

8. *Wesley E. Crothers, et al. v. Theresa A. Oelrichs, et al.* filed in San Francisco May 15, 1919. Proceeding No. 97539.

9. *S. F. Examiner* (June 15, 1919).

10. *S. F. Chronicle* (Nov. 24, 1918), 8, cols. 2-3.

11. One paragraph of the editorial referred to runs:

"Now it is actually true that Fickert is the creature of Henshaw. It was Henshaw who picked him out as a proper man to represent the interests of the grafts defendants in the office of the district attorney. It was Henshaw who acted as his legal advisor through the years of his incumbency. It was Henshaw who pulled the strings for Fickert in the bomb cases. It was Henshaw who stiffened him to resist the demands for a new trial for Mooney. It was Henshaw who gathered together the people in San Francisco who wanted Mooney hanged and endeavored to poison the mind of a journalist who had come here to get the truth about the case. Henshaw has held a brief for Fickert for the past decade. Henshaw has been the brains and kid gloves of the Fickert establishment, while Fickert has been the muscles and dirty hands. Henshaw was the proprietor of the Punch and Judy show in which Fickert was the chief puppet. To establish Henshaw's character is to establish Fickert's assuming that Fickert's is so as to need establishing."

"The evidence is all that Henshaw has been a strong and bad influence, guiding Fickert in the direction of corruption, whenever the danger arose that he might blunder into doing right." (*S. F. Call*, Nov. 25, 1918.)

12. *The Bulletin* (Dec. 25, 1918), 7, col. 4.

13. *The Bulletin* (Nov. 27, 1918), 3, cols. 1, 2, 3.

14. *The Bulletin* (Dec. 31, 1918).

15. *The Bulletin* (Dec. 24, 1918), 3, col. 8.

16. *S. F. Examiner* (June 15, 1919).

17. *S. F. Examiner* (Oct. 20, 1917), p. 13.

18. \$381,302.47.

19. *S. F. Examiner* (Nov. 6, 1917).

20. *S. F. Examiner* (June 24, 1922).

21. *S. F. Chronicle* (June 12, 1929).

22. *S. F. Chronicle* (June 10, 1929), 8, col. 2.

WALTER VAN DYKE

Forty-Sixth Justice, January, 1899 - December, 1905



Walter Van Dyke

Walter Van Dyke was the last of the forty-niners to come to the Supreme Court of California. There were fifteen of them altogether.¹ Curiously enough it took him forty-nine years after he came here to win this position.

No man who has been a justice of the Supreme Court cut an important figure in as many different parts of the state as he did during his life. First the extreme north sent him to the Legislature, both to the Assembly and the Senate. It was while he was living in the central part of the state that he was sent to the Constitutional Convention in 1878-1879. Following this the south made him a superior court judge, and it was while he was serving in this position that the state as a whole saw fit to elevate him to the Supreme Court.

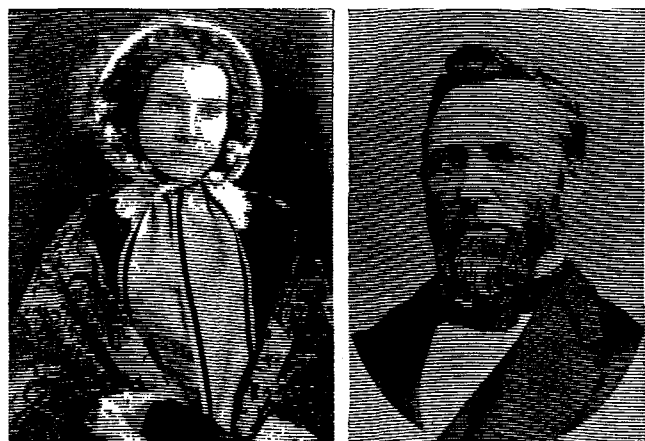
Trained in the law when he came here, he nevertheless was not indisposed to put his hand to such activities as gave promise of the immediate returns which his needs demanded. Like many others who

were later to attain political, financial, and professional distinction in California, he tried mining upon first arriving, and like most of the others, soon found that it was not an easy way to get rich. However, he was not ready to take up the practice of his profession in California until he had also tried his hand at laying out a new townsite. As its possibilities dimmed, those of the law once more commended themselves to his consideration.

Much of his life was spent in adjusting to the new circumstances in which he found himself or to the turn events took. As illustrative, it may be mentioned that he went to the Assembly a Whig, to the Senate a Union Democrat, was a number of years a leader of the Union Party, went to the constitutional convention a Republican, and was elected to the Supreme Court as the candidate of the Silver Republicans, the Democrats, and the People's Party. He practiced his law under conditions that varied widely, from conditions simple to those that were complex.

While he figured prominently in politics through the years, his winnings in this field were not stupendous. He was never spoiled by wealth or power, and was as possessed of the sympathies and outlook of the common man when he died as when he was having his severest struggles.

Van Dyke was born in Tyre, Seneca County, New York, October 3, 1823, and was the son of Martin and Irene (Brockway) Van Dyke. He was of Dutch stock on both his father's and mother's side. His first paternal ancestor in America came to New York from



Mr. and Mrs. Walter Van Dyke

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Holland in 1655. His father, a farmer by occupation, passed away when Van Dyke was thirteen.

He received his elementary education in Earlville, Madison County, New York, where he went to live with a sister and a brother-in-law. Later he attended a seminary known as Liberal Institute, connected with Hamilton College. "He taught school at intervals in the neighborhood and afterward in Wayne County pursuing his studies in the meantime."² He had planned to enter Hamilton College, but was not able to get sufficiently ahead financially to do that. In 1846 he went to Cleveland, Ohio, and taught in the neighborhood of Cleveland for about a year, when he commenced the study of the law in the offices of S. B. and F. J. Prentiss in Cleveland. He was there admitted to the bar in 1848, whereupon he opened an office and commenced the practice in this community.

His practice in Ohio was of short duration, as in May, 1849, he became one of a party of fourteen young men who left Cleveland and started overland for California. "On the way he corresponded with the Cleveland papers, his first letter being dated Chicago, June 5, 1849. In a letter from Salt Lake of October 10 he gave a remarkably close forecast of the route afterward followed by the Union Pacific Railroad, and while fully recognizing the obstacles, among others the absence of available timber and the engineering difficulties he had faith that 'with abundant capital Yankee ingenuity would overcome all obstacles.' While in Salt Lake he wrote numerous letters descriptive of the Mormons, and remarkable for the analysis of the characteristics of that peculiar people."³

As it was getting late in the season his party concluded not to undertake the remaining distance from Salt Lake City by way of the Sierras, but instead joined a party of Missourians and took the southern route to Los Angeles. Before they reached their destination the company ran short of food, and it was necessary to send a small party ahead to get help. Van Dyke was one of this advance party. They were successful in procuring the needed food.

If Van Dyke got to Los Angeles in 1849 it was about the very last day of the year. It may be that he did not reach there until the first days of 1850. However, he reached California during the latter part of December, 1849, qualifying him as a forty-niner.

After stopping a few weeks in Los Angeles Van Dyke and his party proceeded by way of a government transport to San Francisco, leaving San Pedro the latter part of January or the early part of February. From San Francisco they went to Cape Horn, on the American River, where he and his companions mined for gold on what was known as the Ohio Bar through the spring and summer of 1850. They met with "moderate" success.⁴ After a few months of this he returned to San Francisco.

It was in November that he joined a party who had plans for laying out a new townsite on the Klamath River. They left San Francisco by boat, but as they were entering the Klamath River the boat was wrecked. If it had not been for friendly Indians, who helped them ashore, they might all have drowned. Their ship was a complete loss. Soon thereafter, he gave up the townsite idea, and after following mining a short period at Gold Bluff, went to Trinidad near Eureka and Arcata, and began the practice of the law, probably becoming the first practicing lawyer in this area. This, and the neighboring communities constituted the outlet for the business of the northern mines. A short time later he moved to what was then known as Uniontown, now Arcata, where he continued in the practice. It was while he was living in Uniontown that he was married to Rowena Cooper, a daughter of William and Sarah (Glover) Cooper, and here it was that his older children were born.⁵ When Klamath County was organized in June, 1851, he became the first district attorney. It was in 1852 that he was elected on the Whig ticket to the Assembly, serving through the fourth session. This was the session which commenced its deliberations in Vallejo and closed them in Benicia. One of the projects to which he addressed his attention was the establishing of a military post in the north for the protection of the settlers against Indians, resulting in the establishment of Fort Humboldt. Ulysses Simpson Grant was a captain here in 1853, and Van Dyke became acquainted with him at that time. Years later Grant as President of the United States appointed him a United States District Attorney.

Upon the organization of Humboldt County in 1853 he moved from Uniontown to Eureka, the county seat, where he continued in the practice and also became editor of the *Humboldt Times*. A dozen years later John J. De Haven, another Dutchman, and also later a justice of the Supreme Court, worked

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for this same paper. Van Dyke became one of the commissioners appointed to adjust the debt between Humboldt and Trinity Counties upon the reorganizing of these counties. Soon after coming to Eureka he became district attorney for Humboldt County, as he had been for Klamath County.

It was in 1861 that he became a candidate for the state Senate. His opponent was J. T. Ryan. Neither of these men was nominated by any political convention, none being held. Van Dyke and Ryan therefore had "a free fight of it" in which Van Dyke "conquered by fourteen" votes.⁶

Van Dyke's work in the thirteenth legislative session, which commenced in January, 1862, was of great importance, and probably constitutes his greatest contribution to the country. As he campaigned for election he stressed only one issue, the importance of the state unitedly supporting Lincoln and the administration in the prosecution of the war. To this also he addressed himself the most vigorously in the Senate. In all this he had not held himself out as the representative of any particular party. He became the author of a concurrent resolution calling all men to rally to the support of the administration. After considerable debate, it was passed by the Legislature.⁷ Nor was he content to stop here, but also applied his energies to the organizing of an entirely new political party whose principal object should be to further such a program. Some of the leaders and many of the members of the Republican Party were willing. Leland Stanford, then Governor of California, and the leader of that party, however, advised against the Republicans joining the movement, and recommended that they continue to maintain a strict party organization.⁸ David D. Colton, chairman of the Union Democrats' state committee strongly opposed it. In a letter to Van Dyke he urged the advisability of keeping the loyal wing of the Democratic Party intact, setting out several reasons, but the "best of a hundred good reasons why the democratic party should neither fuse with the republicans nor aid in building up a new party, was that when peace was restored, the people would as instinctively look to the democratic party to guide and control them, as would the mariner, after a frightful storm, turn his eyes to the compass to direct his course."⁹ However, party alignment was in a state of flux, and the majority in both the Republican and Union-Democratic Parties did not agree with either Stan-

ford or Colton, and the movement continued to go forward, with the Republicans as a whole, and a great many Union Democrats, responding to a call made by the Republican state committee for a Union convention to be held in Sacramento June 17, 1862, with Van Dyke's political prestige going up meanwhile.

Van Dyke was chosen as the permanent president of this convention.¹⁰ There was a single state office to be voted for in the election this year, namely, the superintendent of public instruction. The new party, known as the Union Party, nominated John Swett as its candidate. The Union Democrats nominated Jonathan D. Stevenson, and the Breckinridge Democrats O. P. Fitzgerald.

The election that followed was important in revealing what support this new movement had among the people. Swett received 51,238 votes, Stevenson 21,514, and Fitzgerald 15,817. The movement had therefore triumphed decisively. Beginning with this election and for the next seven state elections there was to be no Republican Party as such in California. In 1867 the Union Republicans appeared, and in 1869 the Republican Party was again in the field under its own name.

From this it is not difficult to understand why Van Dyke was spoken of as the father of the Union Party. It is said that he was the first one to use the designation "Union Party," namely, in the speech in the Legislature advocating the resolution above mentioned.¹¹

Van Dyke continued to be a prominent political leader in the state for a generation. In 1863 he was mentioned for the Supreme Court of California in the Union convention. In the 1864 convention he was one of the vice presidents. In the Republican convention of 1869 his was one of three names advanced for permanent chairman, the chairmanship, however, going to Thomas B. McFarland. He was appointed a member of the committee on resolutions, however, and at the close of the convention was appointed to the state central committee. In 1871, as chairman of the state committee, he called the Republican convention to order. In this convention his name was placed in nomination for Attorney General, but withdrawn. In 1872 he was a member of the Republican central committee, and a member of the committee on resolutions in the convention that

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met to elect delegates to the national convention. In 1873 he again acted as the chairman of the state central committee and called to order the Republican convention that met at Sacramento September 16th. In 1872 as chairman of the central committee he again called the Republican convention to order. In 1878 he was nominated as a delegate at large in the second congressional district to the constitutional convention, and elected. In 1882 he was again prominently mentioned for the Supreme Court. In 1884 he was a member of the committee on resolutions in the Republican convention.¹²

While a number of the earlier justices of the Supreme Court, including some of the very ablest the Court has had, gave a great deal of time to political activities, Van Dyke probably figures more prominently in this respect than any of them.

Returning to Van Dyke as a state Senator, he was re-elected in 1862, and served in the fourteenth Legislature meeting early in 1863. He was chairman of the judiciary committee this year, and by reason of the constitutional amendments initiated in the previous Legislature, and now in force, there was thrown upon him an extra amount of hard work in carefully checking the various bills referred to this committee.¹³

In 1863 he was nominated for district judge in the eighth judicial district, of which Humboldt County was a part, but he declined to accept it, as he had then arranged to move to San Francisco. Also, this year, he had the honor of being one of the speakers at the ceremony in Sacramento in connection with breaking ground for the construction of the Central Pacific Railroad.

In San Francisco Van Dyke continued in the practice of the law. For some six or seven years he practiced alone, but along about 1871 or 1872 William Loewy joined him, the association becoming known as Van Dyke and Loewy. The association continued until Van Dyke became the United States District Attorney the following year, which position he held two or three years, at the end of which time he again took up the practice in San Francisco. About 1877 or 1878 William S. Wells joined him, the association then becoming Van Dyke & Wells. By 1880 Mr. Wells had dropped out, and he was joined by H. A. Powell, this association being known as Van Dyke & Powell. About 1882 he was joined by his son William M., the association then becoming known as Van Dyke & Van

Dyke, which continued until Van Dyke moved to Los Angeles in 1885.

Van Dyke acted as special attorney for the United States for a while after he ceased to be United States District Attorney, handling some Mexican grant cases.

Van Dyke had maintained his residence in San Francisco until about 1870, when he purchased a seven-acre tract in what was then called East Oakland, where he built and maintained a home, continuing, as noted, to maintain his offices at San Francisco.

In 1885 there was an opening in the firm of Brunson & Wells in Los Angeles, due to Anson Brunson being elected a superior court judge, leaving the junior partner J. Wiley Wells alone. Van Dyke and Bradner W. Lee, some years later a partner of John D. Works, were invited to join Mr. Wells. Both accepted, whereupon Van Dyke moved to Los Angeles, and the new firm became known as Wells, Van Dyke & Lee. After a few years Mr. Wells retired. Van Dyke was elected to the superior court in Los Angeles in 1888. In 1894 he was re-elected for another six-year term, but before it was completed was elected to the Supreme Court of California in 1898.

His work as a superior court judge has been praised. He was known as a hard worker. "His docket is always clear. Lawyers exert themselves to get cases before him, knowing that they will get careful consideration and a quick decision."¹⁴

As mentioned above, Van Dyke was the candidate of the Silver Republicans, the Democrats, and the People's Party, in running for the Supreme Court. His opponent was William C. Van Fleet, the incumbent, running on the Republican and Union Labor tickets. Thomas B. McFarland was also a candidate to succeed himself. "Van Fleet is the Judge who rendered the Loren Fox decision, declaring that the life of a poor man's child is not nearly as valuable as that of a rich man's darling," wrote the *San Francisco Examiner*,¹⁵ in sponsoring the candidacy of Van Dyke. Van Dyke defeated Van Fleet, receiving 117,287 votes to 108,212 received by Van Fleet.

When he became a member of the Court in January, 1899, Beatty was the Chief Justice, and McFarland, Temple, Henshaw, Garoutte, Harrison, and himself the associate justices. He was then seventy-

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five years old. His age had been the chief argument advanced against him. He had served seven years of his term, when he passed away late in 1905, whereupon M. C. Sloss was appointed his successor early in 1906. Three changes only took place in the Court's personnel the period Van Dyke served. Temple died in December, 1902, whereupon Lorigan was appointed. Garoutte's and Harrison's terms expired in January, 1903, whereupon they were succeeded by Shaw and Angellotti, who had been elected in the November election of 1902. Upon coming to the Court Van Dyke again moved to his old home in East Oakland, the same never having been sold.

A number of Van Dyke's opinions have found their way into the leading casebooks of the country.¹⁶

Van Dyke died at his home in Oakland on the evening of December 25, Christmas Day, 1905. He had been sick a very short time, and his death was unexpected. What was thought to be a slight cold suddenly developed into pneumonia in a virulent form. He had attended to his judicial duties up to the time the Court had adjourned for the Christmas holiday and had at that time mentioned that he had never felt better.

He left surviving him his wife, and five of the eight children that had been born to them, namely, Irene (Mrs. Franklin Bangs), William Martin, Caroline, Edwin C., and Henry Seward. Three children had predeceased him, Walter Cooper, Walter Lincoln, and Edith.

The funeral took place from his residence on December 27th, and was under the direction of Rev. J. K. McLean of the Pacific Theological Seminary, a Congregational institution, of which church Van Dyke was a member. The Oakland Lodge of Masons conducted a ceremony at his graveside. The pallbearers were Chief Justice Beatty, John J. De Haven of the United States District Court and a former townsman in Eureka, J. S. Hutchinson of the Society of California Pioneers, of which organization Van Dyke was at one time the president, H. A. Powell, a former partner, Walter B. Cope of the San Francisco Bar Association, and A. K. Clark and W. Kohler of the Oakland Lodge of Masons. His remains were interred at Mountain View Cemetery in Oakland.

The courts of the state adjourned out of respect for his memory. One of the finest tributes was expressed by the late Thomas F. Graham, of the San

Francisco Superior Court. He mentioned how the profession "readily forgave him his reserve" when they considered his virtues.¹⁷ Memorial services in his honor were held in the Supreme Court October 15, 1906.¹⁸

By holographic will a half page long, Van Dyke left his modest estate to his wife.

In stature, Van Dyke was small and spare, being only about five feet, four or five inches tall. When he was younger his hair was black, while his eyes were blue and his skin fair. His alertness and sprightliness were among his outstanding traits. He was of the active and energetic type. Much of his reserve was cultivated. "I feel the necessity for a candidate for a judicial place," he remarked at the time he was running for the Supreme Court, "to maintain the most scrupulous recognition of the proprieties. A justice must not express himself too freely, because there is always a possibility of the very matter he is discussing coming before him . . ."¹⁹

That Van Dyke was public spirited in an unusually high degree is abundantly borne out by his record. Perhaps he was too much so for his own good. When he went to the constitutional convention in 1878-1879 he did it at great personal sacrifice and with almost irreparable injury to his practice. However, his sense of public duty controlled. In the convention he had favored the abolition of the grand jury, and providing for the institution of criminal proceeding by information instead. The result was a compromise, permitting the use of either method. He also had a hand in taking the University of California out of politics, by having its powers and rights defined by the Constitution. He was always deeply interested in educational matters.

He was a forceful public speaker. He frequently took the stump. He was an ardent lover of liberty. In his closing remarks at a rally held at Sacramento in November, 1864, when Lincoln and Johnson were up for re-election he said in part:

... Now, after the long trial which has been allotted us, if we suffer this Government to go down, the judgment of the world will be that republican government is worthless; that here on this continent it had been given a fair trial under the most favorable circumstances, and had been found wanting in one of the main essentials—that in fair weather it might get along very well, but when the storm of insurrection and rebellion arose it went to pieces and became a perfect wreck. This would be a triumph of despotism the world over, and the death knell of liberty and free government.²⁰

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He was possessed of a fine sense of humor. On one occasion, while riding with a stage driver in Los Angeles County, the latter proceeded to point out the bounds of a famous Mexican grant that had been discussed in the newspapers. The driver told Van Dyke a great deal about the litigation that had been involved in fixing its boundaries. When he got through, Van Dyke quietly told him he had been one of the attorneys who had handled the case, and also added a little to his information.

With a number of other pioneers, one of the streets in San Francisco was named after him.²¹ An avenue constructed through the tract he lived on in Oakland was also named after him.

While Van Dyke aspired in his younger days to become someone of consequence in the law, he nevertheless, as above noted, was not above doing what circumstances dictated, until such time as he should be able to play the role of the successful lawyer or judge. He liked public service and public life and exerted himself therein as a public duty. In this he reaped a full measure of the respect of the community. He derived much satisfaction in his family life. He availed himself of the refining influences of the church. He was dignified and high-toned, at the same time democratic and considerate.

His life ended under happy circumstances. To the last his physical strength and mental faculties held up. He enjoyed his work. It was hard work, but within his abilities, and all of it important. Truly he was spared the heartaches that may come when one feels that one has served one's full usefulness and is no longer good for anything. While he did not leave as much money as many of the men who have been justices, it was nevertheless more than some of them left.

Van Dyke's son, Edwin C. Van Dyke, many years a professor at the University of California, gave much help in preparing this sketch.

FOOTNOTES

1. Hastings, Bennett, Lyons, Murray, Wells, Bryan, Terry, Burnett, (1848) Field, Norton, Currey, McKinstry, Searls, De Haven, Van Dyke.

2. *Illustrated History of Los Angeles County* (The Lewis Publishing Company, Chicago, 1889), p. 167.

3. *Ibid.*

4. *Ibid.*

5. William Cooper came to this country from Scotland, where he had been a ship builder. He had a large family and gave considerable thought to a suitable place to raise it. He did not wish to settle in the Southern states because he was opposed to slavery, nor Australia, because of the stigma which he felt would fall upon them by reason of the Botany Bay Colony. With the discovery of gold in California he decided to come here. He came around the Horn in a vessel he had himself built, arriving in San Francisco in 1850. Here he settled and lived for some time. His wife, a daughter, and a son-in-law fell victims of the cholera epidemic in 1850, the only one that has ever swept over San Francisco, and died here, along with the thousands of others. In 1850 or 1851 he acquired holdings near Hideville, and took his family there where he put up a lumber mill and a grist mill. Three of his sons and a son-in-law were killed by Indians. Another died of exposure while bringing some cattle over the mountains from Sacramento. This left only one son and two daughters, one of the latter becoming Mrs. Van Dyke.

6. *Alta California* (Oct. 22, 1861).

7. *Statutes of California* (1862), p. 603.

8. Davis, *Political Conventions in California*, p. 182.

9. *Ibid.*, p. 183.

10. *Ibid.*, p. 184.

11. Shuck, *History of the Bench and Bar of California* (1901 ed.), p. 496.

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